STATE LAW LIBRARY
AUG 29 2002
OF MONTANA

MONTANA

CODE

ANNOTATED

1979

HAROLD H. HARRISON
ATTORNEY AT LAW

MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

DIANA S. DOWLING

Code Commissioner

Staff Attorneys

H. David Cogley
Robert Clark Pyfer
Laurence Weinberg
James H. Lear
Shaun Robin Simon
Joan Helen Pauly Mayer
John A. Bobinski
Randall J. "Rock" McDonald
Robert N. Lane

Indexers

Nadine E. Geil
Jacqueline Nichols Terrell
Valeri Hanson, Index Technician

ROBERTA MOODY

Director Computer Services

Copy Editors

Doris Groot
Clarice O. Smith
Georgia Remmel Brurud

Data Entry Operators

Bonni Belden
Connie Dixon
Maurie Finstad
Margaret Liles
Martha Lowe
Marilynn Novak
Nancy Ritz
Patricia Small

Proofreaders

Phyllis Cote
Marie Fuhrmann
Mary Alice Johnson
Jane Kufeld
Andrea Merrill
Claudena Miller
Mary Ellen Randall
Carlyce Skjervem
Doug Sternberg

Data Processing Specialist

Henry Trenk

Distribution

Jean Dayton

HAROLD H. HARRISON
ATTORNEY AT LAW

Published by the
MONTANA LEGISLATIVE COUNCIL
Room 138, State Capitol
Helena, Montana 59601
Telephone (406) 449-3064

1979

3
Printed by
COLOR WORLD OF MONTANA, INC.
201 E. Mendenhall, Bozeman, MT 59715

28 341MT XL 971
7/02 71960-200 NLB

ATTORNEY AT LAW
HAROLD H. HARRISON

Copyright
© 1978, 1979
by
The State of Montana

MONTANA CODE ANNOTATED
1979
CONTENTS

Volume 1
CONSTITUTION
GOVERNMENT-RELATED
Titles
1. General Laws and Definitions
2. State Government Administration
3. Judiciary, Courts
4. Reserved
5. Legislative Branch
6. Reserved

Volume 2
LOCAL GOVERNMENT
Titles
7. Local Government (Chs. 1-10)

Volume 3
LOCAL GOVERNMENT
Titles
7. Local Government (Chs. 11-35)
8 and 9. Reserved

Volume 4
GOVERNMENT-RELATED
Titles
10. Military Affairs and Disaster and Emergency Services
11 and 12. Reserved
13. Elections
14. Reserved
15. Taxation)
16. Alcohol and Tobacco) Finances
17. State Finance)
18. Public Contracts

Volume 5
RETIREMENT — EDUCATION — LEISURE TIME
Titles
19. Public Retirement Systems
20. Education
21. Reserved
22. Libraries, Arts, and Antiquities
23. Parks, Recreation, Sports, and Gambling
24. Reserved

Volume 6
CIVIL PROCEDURE — LEGAL RELATIONSHIPS — TRADE AND COMMERCE
Titles
25. Civil Procedure
26. Evidence
27. Remedies
28. Contracts and Other Obligations
29. Reserved
30. Trade and Commerce

Volume 7
CREDIT — FINANCE — INSURANCE
Titles
31. Credit Transactions and Relationships
32. Financial Institutions
33. Insurance
34. Reserved

Volume 8
CORPORATIONS — PROFESSIONS — LABOR
Titles
35. Corporations, Partnerships, and Associations
36. Reserved
37. Professions and Occupations
38. Reserved
39. Labor

Volume 9
FAMILY — CRIME — HEALTH
Titles
40. Family Law
41. Minors
42 and 43. Reserved
44. Law Enforcement
45. Crimes
46. Criminal Procedure
47 and 48. Reserved
49. Human Rights
50. Health and Safety
51 and 52. Reserved

Volume 10
SOCIAL SERVICES — TRANSPORTATION — UTILITIES
Titles
53. Social Services and Institutions
54 - 59. Reserved
60. Highways
61. Motor Vehicles and Traffic Regulations
62 - 66. Reserved
67. Aeronautics
68. Reserved
69. Public Utilities and Carriers

Volume 11
PROPERTY — ESTATES
Titles
70. Property
71. Mortgages, Pledges, and Liens
72. Estates, Trusts, and Fiduciary Relationships
73 and 74. Reserved

CONTENTS

Volume 12
NATURAL RESOURCES —
AGRICULTURE — LIVESTOCK

Titles
75. Environmental Protection
76. Land Resources and Use
77. State Lands
78 and 79. Reserved
80. Agriculture
81. Livestock

Volume 13
NATURAL RESOURCES — MINERALS—
WATER — WILDLIFE — PLANNING

Titles
82. Minerals, Oil, and Gas
83 and 84. Reserved
85. Water Use
86. Reserved
87. Fish and Wildlife
88 and 89. Reserved
90. Planning, Research, and Development
91 - 99. Reserved

INDEX

TITLE 40

FAMILY LAW

Ch.
1. Marriage.
2. Husband and Wife.
3. Reconciliation.
4. Termination of Marriage, Child Custody, Support.
5. Enforcement of Support.
6. Parent and Child.
7. Uniform Child Custody Jurisdiction Act.
8. Adoption.
9. Grandparent Visitation.

CHAPTER 1

MARRIAGE

Part 1 — General Provisions

Section
40-1-101. Purposes.
40-1-102. Uniformity of application and construction.
40-1-103. Formalities.
40-1-104. Application.
40-1-105. Application of the Montana Rules of Civil Procedure.
40-1-106. Parts of code not applicable.
40-1-107. Form of application, license, marriage certificate, and consent.

Part 2 — License Provisions

40-1-201. License application.
40-1-202. License issuance.
40-1-203. Proof of age and medical certificate required.
40-1-204. Contents and form of medical certificate.
40-1-205. Certificates from other states or for military personnel — when acceptable.
40-1-206. Premarital test — rules.
40-1-207. Examination by health officer.
40-1-208. Penalties.
40-1-209. Expenses.
40-1-210. No license to be issued when applicants under influence of liquor or drug.
40-1-211. Repealed. Sec. 1, Ch. 124, L. 1979.
40-1-212. Effective date of license.
40-1-213. Judicial approval.

Part 3 — Solemnization

40-1-301. Solemnization and registration.
Sections 40-1-302 through 40-1-310 reserved.
40-1-311. Declaration of marriage without solemnization.
40-1-312. Persons who may draft declaration of marriage.
40-1-313. Penalty.
Sections 40-1-314 through 40-1-320 reserved.
40-1-321. Registration of marriage.
40-1-322. Certificate and copy presumptive evidence.
40-1-323. Proof of solemnized marriage when no record.

40-1-324. Declaration to be acknowledged and recorded.

Part 4 — Validity of Marriages
Declaration of Invalidity

40-1-401. Prohibited marriages.
40-1-402. Declaration of invalidity.
40-1-403. Validity of common-law marriage.
40-1-404. Putative spouse.

Part 1

General Provisions

40-1-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

40-1-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-1-103. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this chapter is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

History: En. 48-304 by Sec. 4, Ch. 536, L. 1975; R.C.M. 1947, 48-304.

40-1-104. Application. All marriages contracted within this state prior to January 1, 1976, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

History: En. 48-313 by Sec. 13, Ch. 536, L. 1975; R.C.M. 1947, 48-313.

40-1-105. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a

response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

40-1-106. Parts of code not applicable. The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them have no application to the contract of marriage.

History: En. Sec. 58, Civ. C. 1895; re-en. Sec. 3615, Rev. C. 1907; re-en. Sec. 5708, R.C.M. 1921; Field Civ. C. Sec. 43; re-en. Sec. 5708, R.C.M. 1935; R.C.M. 1947, 48-114.

40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an application for a marriage license, which shall include the following information:

(a) name, sex, address, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

History: En. 48-305 by Sec. 5, Ch. 536, L. 1975; R.C.M. 1947, 48-305.

Part 2

License Provisions

40-1-201. License application. (1) No Montana resident may be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least 5 days immediately prior to making application therefor.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, his part of the application may be

completed and sworn to or affirmed before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963; amd. Sec. 8, Ch. 33, L. 1977; R.C.M. 1947, 48-146.

40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of $25, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

History: En. 48-306 by Sec. 6, Ch. 536, L. 1975; R.C.M. 1947, 48-306; amd. Sec. 6, Ch. 677, L. 1979.

40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213 and shall file with him a medical certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make a medical certificate. The certificate shall state that the applicant has been given an examination, including a standard serological test, made not more than 20 days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977; R.C.M. 1947, 48-134; amd. Sec. 1, Ch. 33, L. 1979.

40-1-204. Contents and form of medical certificate. (1) The medical certificate shall contain a statement from the person in charge of the laboratory making the test or authorized to make such reports, setting forth:

(a) the name of the test;

(b) the date it was made;

(c) the name and address of the physician or other person authorized under the laws of Montana to make the test;

(d) to whom the test was sent; and

(e) the name and address of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) The certificate and statement shall be on a form to be provided and distributed by the department of health and environmental sciences to all county clerks of the court in the state and to laboratories in this state approved by the department. This form is hereinafter referred to in 40-1-205 through 40-1-209 as "the certificate form".

History: En. Sec. 2, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 5, Ch. 33, L. 1977; R.C.M. 1947, 48-135.

40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have been examined and who have received a standard serological test outside of Montana if such examinations and tests are performed not more than 20 days before the issuance of a marriage license. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard serological tests and were performed not more than 20 days before the issuance of the marriage license.

History: En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973; R.C.M. 1947, 48-136.

40-1-206. Premarital test — rules. For the purpose of 40-1-203 through 40-1-209, a standard serological test shall be a test for rubella immunity and syphilis, as approved by the department of health and environmental sciences. An approved laboratory shall be the laboratory of the department or a laboratory approved by that department. Any other state or United States public health service or United States armed forces laboratory shall be considered approved for the purposes of 40-1-203 through 40-1-209. Such laboratory test may be made on request at the laboratory of the department of health and environmental sciences. Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state shall be adopted by the department of health and environmental sciences.

History: En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973; amd. Sec. 6, Ch. 33, L. 1977; R.C.M. 1947, 48-137.

40-1-207. Examination by health officer. Any applicant for a marriage license may, if he so chooses, be examined free of charge by the county physician or county health officer.

History: En. Sec. 5, Ch. 208, L. 1947; R.C.M. 1947, 48-138.

40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by the laws of Montana to make a medical certificate or any person in charge of or authorized to make reports or statements for a laboratory who misrepresents his identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing officer who issues a marriage license without having received the certificate form or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges such information or opens to inspection such certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

History: En. Sec. 6, Ch. 208, L. 1947; amd. Sec. 7, Ch. 33, L. 1977; R.C.M. 1947, 48-139.

40-1-209. Expenses. The department of health and environmental sciences shall provide the necessary printing and pay the necessary expenses relative to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for such expenses shall be submitted for approval and audit to the department of health and environmental sciences and shall be paid in accordance with law.

History: En. Sec. 7, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 48-140.

40-1-210. No license to be issued when applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963; R.C.M. 1947, 48-147.

40-1-211. Repealed. Sec. 1, Ch. 124, L. 1979.

40-1-212. Effective date of license. A license to marry becomes effective throughout this state 3 days after the date of issuance, unless the judge of the district court orders that the license is effective when issued, and expires 180 days after it becomes effective.

History: En. 48-307 by Sec. 7, Ch. 536, L. 1975; R.C.M. 1947, 48-307.

40-1-213. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged 16 or 17 years who has no parent capable of consenting to his marriage or has the consent of both parents or of the parent having the actual care, custody, and control to his marriage, if capable of giving consent, or of his guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his

best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

History: En. 48-308 by Sec. 8, Ch. 536, L. 1975; R.C.M. 1947, 48-308; amd. Sec. 1, Ch. 183, L. 1979.

Part 3

Solemnization

40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

History: En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; R.C.M. 1947, 48-309(1), (2), (4); amd. Sec. 1, Ch. 247, L. 1979.

40-1-302 through 40-1-310 reserved.

40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(2) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

History: En. Sec. 85, Civ. C. 1895; re-en. Sec. 3631, Rev. C. 1907; re-en. Sec. 5724, R.C.M. 1921; Cal. Civ. C. Sec. 75; re-en. Sec. 5724, R.C.M. 1935; amd. Sec. 1, Ch. 275, L. 1959; amd. Sec. 44, Ch. 536, L. 1975; R.C.M. 1947, 48-130; amd. Sec. 2, Ch. 33, L. 1979.

40-1-312. Persons who may draft declaration of marriage. It shall be unlawful for any person other than the parties to such written declaration to draw any such declaration of marriage unless he shall have been duly licensed to practice law in the state of Montana.

History: En. Sec. 2, Ch. 275, L. 1959; R.C.M. 1947, 48-130.1.

40-1-313. Penalty. Any person violating the provisions of 40-1-311 or 40-1-312, upon conviction, shall be subject to a fine of not less than $300 or 6 months in a county jail, or both.

History: En. Sec. 3, Ch. 275, L. 1959; R.C.M. 1947, 48-130.2.

40-1-314 through 40-1-320 reserved.

40-1-321. Registration of marriage. (1) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(2) Every person solemnizing a marriage who shall neglect to make and deliver to the clerk of the district court a certificate thereof within 30 days after having solemnized such marriage shall forfeit for such neglect a sum not less than $10 or more than $50; and any clerk of the district court who shall neglect to record such certificate so delivered within 1 month after its delivery shall forfeit the like penalty.

History: (1)En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; Sec. 48-309, R.C.M. 1947; (2)En. Sec. 7, p. 409, Bannack Stat.; re-en. Sec. 7, p. 520, Cod. Stat. 1871; re-en. Sec. 860, 5th Div. Rev. Stat. 1879; re-en. Sec. 1421, 5th Div. Comp. Stat. 1887; amd. Sec. 79, Civ. C. 1895; re-en. Sec. 3625, Rev. C. 1907; re-en. Sec. 5718, R.C.M. 1921; re-en. Sec. 5718, R.C.M. 1935; Sec. 48-124, R.C.M. 1947; R.C.M. 1947, 48-124, 48-309(3).

40-1-322. Certificate and copy presumptive evidence. The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage.

History: En. Sec. 10, p. 410, Bannack Stat.; re-en. Sec. 10, p. 521, Cod. Stat. 1871; re-en. Sec. 863, 5th Div. Rev. Stat. 1879; re-en. Sec. 1424, 5th Div. Comp. Stat. 1887; amd. Sec. 81, Civ. C. 1895; re-en. Sec. 3627, Rev. C. 1907; re-en. Sec. 5720, R.C.M. 1921; re-en. Sec. 5720, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1977; R.C.M. 1947, 48-126.

40-1-323. Proof of solemnized marriage when no record. If the record of the solemnization of a marriage heretofore entered into has been lost or destroyed and not known to exist, the parties may join in a written declaration of such marriage, substantially showing:

(1) the names, ages, and residences of the parties;

(2) the date and place of marriage and other pertinent facts of the marriage;

(3) that the record of the solemnized marriage has become lost or destroyed, as the case may be, and is not known to exist.

History: En. Sec. 86, Civ. C. 1895; re-en. Sec. 3632, Rev. C. 1907; re-en. Sec. 5725, R.C.M. 1921; Cal. Civ. C. Sec. 76; re-en. Sec. 5725, R.C.M. 1935; amd. Sec. 1, Ch. 276, L. 1959; R.C.M. 1947, 48-131.

40-1-324. Declaration to be acknowledged and recorded. The written declaration of marriage provided for in 40-1-323 shall be attested by at least two witnesses and formally acknowledged by an official authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district court in the county of the residence of the parties shall serve as an official record of the marriage of the parties.

History: En. Sec. 87, Civ. C. 1895; re-en. Sec. 3633, Rev. C. 1907; re-en. Sec. 5726, R.C.M. 1921; Cal. Civ. C. Sec. 77; re-en. Sec. 5726, R.C.M. 1935; amd. Sec. 2, Ch. 276, L. 1959; R.C.M. 1947, 48-132.

Part 4

Validity of Marriages — Declaration of Invalidity

40-1-401. Prohibited marriages. (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

History: En. 48-310 by Sec. 10, Ch. 536, L. 1975; R.C.M. 1947, 48-310.

40-1-402. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into the other party did not know of the incapacity;

(c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

History: En. 48-311 by Sec. 11, Ch. 536, L. 1975; amd. Sec. 1, Ch. 279, L. 1977; R.C.M. 1947, 48-311.

40-1-403. Validity of common-law marriage. Common-law marriages are not invalidated by this chapter. Declarations of marriage pursuant to 40-1-311 through 40-1-313, 40-1-323, and 40-1-324 are not invalidated by this chapter.

History: En. 48-314 by Sec. 14, Ch. 536, L. 1975; R.C.M. 1947, 48-314.

40-1-404. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good-faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (40-1-401) or declared invalid (40-1-402). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

History: En. 48-312 by Sec. 12, Ch. 536, L. 1975; R.C.M. 1947, 48-312.

CHAPTER 2

HUSBAND AND WIFE

Part 1 — Joint Interests, Obligations, and Powers

Section
40-2-101. Mutual obligations of husband and wife.
40-2-102. Duties of husband and wife as to support.

40-2-103. Support of spouse.
40-2-104. Liability of married person when abandoned by spouse.
40-2-105. Husband and wife as joint tenants.
40-2-106. Liability for acts or debts of spouse.
40-2-107. May sue and be sued.
40-2-108. Married person as personal representative, guardian, conservator, or trustee.
40-2-109. Right of person to sue spouse for intentional tort.

Part 2 — Individual Property

40-2-201. When husband's and wife's interests separate.
40-2-202. Individual property of married person.
40-2-203. Inventory of individual personal property of married person.
40-2-204. Effect of filing inventory.
40-2-205. Earnings and accumulations of married person.
40-2-206. Same — when separated.
40-2-207. Work and labor of married person.
40-2-208. Debts of spouse contracted before marriage.
40-2-209. Individual property of married person — how far liable.
40-2-210. Necessity determined by standard of living.

Part 3 — Power of Married Persons to Contract

40-2-301. Husband and wife may contract.
40-2-302. Liability of spouse.
40-2-303. Alteration of legal relation by contract — separation agreement.
40-2-304. Consideration for separation.
Sections 40-2-305 through 40-2-310 reserved.
40-2-311. Rights of husband and wife — how governed.
40-2-312. Marriage settlement contracts — how executed.
40-2-313. Contract to be acknowledged and recorded.
40-2-314. Effect of recording.
40-2-315. Marriage settlement by minors.

Part 4 — Battered Spouses Grant Programs

40-2-401. Battered spouses and domestic violence grant program created.
40-2-402. Duties of department.
40-2-403. Authorized grantees — criteria for grants.
40-2-404. Authorized services of programs.
40-2-405. Funding.

Part 1

Joint Interests, Obligations, and Powers

40-2-101. Mutual obligations of husband and wife. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

History: En. Sec. 210, Civ. C. 1895; re-en. Sec. 3690, Rev. C. 1907; re-en. Sec. 5782, R.C.M. 1921; Cal. Civ. C. Sec. 155; Field Civ. C. Sec. 75; re-en. Sec. 5782, R.C.M. 1935; R.C.M. 1947, 36-101.

40-2-102. Duties of husband and wife as to support. Insofar as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the nonmonetary support provided by a spouse as homemaker.

History: En. Sec. 212, Civ. C. 1895; re-en. Sec. 3692, Rev. C. 1907; re-en. Sec. 5784, R.C.M. 1921; Field Civ. C. Sec. 77; re-en. Sec. 5784, R.C.M. 1935; amd. Sec. 1, Ch. 293, L. 1975; R.C.M. 1947, 36-103.

40-2-103. Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of his spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value thereof from the married person who has failed to provide such support.

History: En. Sec. 244, Civ. C. 1895; re-en. Sec. 3724, Rev. C. 1907; re-en. Sec. 5800, R.C.M. 1921; Cal. Civ. C. Sec. 174; Field Civ. C. Sec. 84; re-en. Sec. 5800, R.C.M. 1935; amd. Sec. 12, Ch. 293, L. 1975; R.C.M. 1947, 36-119.

40-2-104. Liability of married person when abandoned by spouse. A married person abandoned by his spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified by the person's misconduct in abandoning him, nor is a married person liable for support of a spouse who is living separate from him by agreement, unless such support is stipulated in the agreement.

History: En. Sec. 245, Civ. C. 1895; re-en. Sec. 3725, Rev. C. 1907; re-en. Sec. 5801, R.C.M. 1921; Cal. Civ. C. Sec. 175; Based on Field Civ. C. Sec. 85; re-en. Sec. 5801, R.C.M. 1935; amd. Sec. 13, Ch. 293, L. 1975; R.C.M. 1947, 36-120.

40-2-105. Husband and wife as joint tenants. A husband and wife may hold real or personal property together, jointly or in common.

History: En. Sec. 217, Civ. C. 1895; re-en. Sec. 3697, Rev. C. 1907; re-en. Sec. 5789, R.C.M. 1921; Cal. Civ. C. Sec. 161; Field Civ. C. Sec. 82; re-en. Sec. 5789, R.C.M. 1935; R.C.M. 1947, 36-108.

40-2-106. Liability for acts or debts of spouse. Neither husband nor wife, as such, is answerable for the acts of the other or liable for the debts contracted by the other; provided, however, that the expenses for necessaries of the family and of the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

History: En. Sec. 218, Civ. C. 1895; re-en. Sec. 3698, Rev. C. 1907; amd. Sec. 1, Ch. 129, L. 1915; re-en. Sec. 5790, R.C.M. 1921; re-en. Sec. 5790, R.C.M. 1935; R.C.M. 1947, 36-109.

40-2-107. May sue and be sued. A married person may sue and be sued in the same manner as if he were sole.

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887; re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R.C.M. 1921; re-en. Sec. 5809, R.C.M. 1935; amd. Sec. 15, Ch. 293, L. 1975; R.C.M. 1947, 36-128.

40-2-108. Married person as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee and may bind himself and the estate he represents without any act or assent on the part of the person's spouse.

History: En. Sec. 1443, 5th Div. Comp. Stat. 1887; re-en. Sec. 252, Civ. C. 1895; re-en. Sec. 3732, Rev. C. 1907; re-en. Sec. 5808, R.C.M. 1921; re-en. Sec. 5808, R.C.M. 1935; amd. Sec. 14, Ch. 293, L. 1975; R.C.M. 1947, 36-127.

40-2-109. Right of person to sue spouse for intentional tort. A person has a cause of action against his spouse for damages caused by the spouse's intentional tort against such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

History: En. Sec. 1, Ch. 407, L. 1979.

Part 2

Individual Property

40-2-201. When husband's and wife's interests separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling unless enjoined by a court.

History: En. Sec. 213, Civ. C. 1895; re-en. Sec. 3693, Rev. C. 1907; re-en. Sec. 5785, R.C.M. 1921; Cal. Civ. C. Sec. 157; Field Civ. C. Sec. 78; re-en. Sec. 5785, R.C.M. 1935; R.C.M. 1947, 36-104; amd. Sec. 2, Ch. 407, L. 1979.

40-2-202. Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is his individual property. The married person may, without consent, agreement, and signature of his spouse, convey and transfer his individual property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer thereof.

History: En. Sec. 220, Civ. C. 1895; re-en. Sec. 3700, Rev. C. 1907; re-en. Sec. 5792, R.C.M. 1921; Cal. Civ. C. Sec. 162; amd. Sec. 1, Ch. 63, L. 1923; re-en. Sec. 5792, R.C.M. 1935; amd. Sec. 3, Ch. 293, L. 1975; R.C.M. 1947, 36-111.

40-2-203. Inventory of individual personal property of married person. A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property and recorded in the office of the county clerk of the county in which the person lives.

History: En. Sec. 221, Civ. C. 1895; re-en. Sec. 3701, Rev. C. 1907; re-en. Sec. 5793, R.C.M. 1921; Cal. Civ. C. Sec. 165; re-en. Sec. 5793, R.C.M. 1935; amd. Sec. 4, Ch. 293, L. 1975; R.C.M. 1947, 36-112.

40-2-204. Effect of filing inventory. The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the person so filing.

History: En. Sec. 222, Civ. C. 1895; re-en. Sec. 3702, Rev. C. 1907; re-en. Sec. 5794, R.C.M. 1921; Cal. Civ. C. Sec. 166; re-en. Sec. 5794, R.C.M. 1935; amd. Sec. 5, Ch. 293, L. 1975; R.C.M. 1947, 36-113.

40-2-205. Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 223, Civ. C. 1895; re-en. Sec. 3703, Rev. C. 1907; re-en. Sec. 5795, R.C.M. 1921; Cal. Civ. C. Sec. 168; re-en. Sec. 5795, R.C.M. 1935; amd. Sec. 6, Ch. 293, L. 1975; R.C.M. 1947, 36-114.

40-2-206. Same — when separated. The earnings and accumulations of a married person and of his minor children living with him or in his custody, while he is living separate from his spouse, are the individual property of such person except that, to the extent that a mutual duty of support between the husband and wife as established by 40-2-102 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 224, Civ. C. 1895; re-en. Sec. 3704, Rev. C. 1907; re-en. Sec. 5796, R.C.M. 1921; Cal. Civ. C. Sec. 169; re-en. Sec. 5796, R.C.M. 1935; amd. Sec. 7, Ch. 293, L. 1975; R.C.M. 1947, 36-115.

40-2-207. Work and labor of married person. All work and labor performed by a married person for a person other than his spouse and children shall, unless there is a written agreement on his part to the contrary, be presumed to be performed on his separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children, as established by 40-2-205, 40-2-206, 40-2-209, and 40-2-210.

History: En. Sec. 1442, 5th Div. Comp. Stat. 1887; re-en. Sec. 225, Civ. C. 1895; re-en. Sec. 3705, Rev. C. 1907; re-en. Sec. 5797, R.C.M. 1921; re-en. Sec. 5797, R.C.M. 1935; amd. Sec. 8, Ch. 293, L. 1975; R.C.M. 1947, 36-116.

40-2-208. Debts of spouse contracted before marriage. The property of a married person is not liable for the debts of the person's spouse contracted before marriage.

History: En. Sec. 226, Civ. C. 1895; re-en. Sec. 3706, Rev. C. 1907; re-en. Sec. 5798, R.C.M. 1921; Cal. Civ. C. Sec. 170; re-en. Sec. 5798, R.C.M. 1935; amd. Sec. 9, Ch. 293, L. 1975; R.C.M. 1947, 36-117.

40-2-209. Individual property of married person — how far liable. Individual property of a married person listed in an inventory as provided in 40-2-203 and 40-2-204 or otherwise proved to be the individual property of the married person is exempt from all debts and liabilities of that person's spouse, except:

(1) when the debt or liability is for necessary articles procured for the use and benefit of the married person, the spouse, or minor children; or

(2) when the property is in the sole and exclusive possession of the spouse and the creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse.

History: En. Sec. 1, p. 369, Bannack Stat.; re-en. Sec. 1, p. 521, Cod. Stat. 1871; re-en. Sec. 866, 5th Div. Rev. Stat. 1879; re-en. Sec. 1432, 5th Div. Comp. Stat. 1887; amd. Sec. 227, Civ. C. 1895; re-en. Sec. 3707, Rev. C. 1907; re-en. Sec. 5799, R.C.M. 1921; Cal. Civ. C. Sec. 171; re-en. Sec. 5799, R.C.M. 1935; amd. Sec. 10, Ch. 293, L. 1975; R.C.M. 1947, 36-118.

40-2-210. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property are exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all such goods and services as are reasonably required to provide for the health, welfare, comfort, and education of the married person, his spouse, and minor children, taking into consideration the earnings, resources, and general standard of living of such persons.

History: En. 36-118.1 by Sec. 11, Ch. 293, L. 1975; R.C.M. 1947, 36-118.1.

Part 3

Power of Married Persons to Contract

40-2-301. Husband and wife may contract. Either husband or wife may enter into any engagement or transaction with the other or with any other person respecting property which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the provisions of this code relative to trusts.

History: En. Sec. 214, Civ. C. 1895; re-en. Sec. 3694, Rev. C. 1907; re-en. Sec. 5786, R.C.M. 1921; Cal. Civ. C. Sec. 158; Field Civ. C. Sec. 79; re-en. Sec. 5786, R.C.M. 1935; R.C.M. 1947, 36-105.

40-2-302. Liability of spouse. The contracts made by a married person in respect to his individual property, labor, or services shall not be binding upon the person's spouse nor render him or his property liable therefor; but the contracting person and that person's individual property shall be liable on such contracts in the same manner as if such person were sole.

History: En. Sec. 1446, 5th Div. Comp. Stat. 1887; re-en. Sec. 254, Civ. C. 1895; re-en. Sec. 3734, Rev. C. 1907; re-en. Sec. 5810, R.C.M. 1921; re-en. Sec. 5810, R.C.M. 1935; amd. Sec. 16, Ch. 293, L. 1975; R.C.M. 1947, 36-129.

40-2-303. Alteration of legal relation by contract — separation agreement. A husband and wife cannot by any contract with each other alter their legal relation, except as to property and except that they may agree, in writing, to an immediate separation and may make provision for the support of either of them and of their children during such separation.

History: En. Sec. 215, Civ. C. 1895; re-en. Sec. 3695, Rev. C. 1907; re-en. Sec. 5787, R.C.M. 1921; Cal. Civ. C. Sec. 159; Based on Field Civ. C. Sec. 80; re-en. Sec. 5787, R.C.M. 1935; R.C.M. 1947, 36-106.

40-2-304. Consideration for separation. The mutual consent of the parties is a sufficient consideration for such an agreement as mentioned in 40-2-303.

History: En. Sec. 216, Civ. C. 1895; re-en. Sec. 3696, Rev. C. 1907; re-en. Sec. 5788, R.C.M. 1921; Cal. Civ. C. Sec. 160; Field Civ. C. Sec. 81; re-en. Sec. 5788, R.C.M. 1935; R.C.M. 1947, 36-107.

40-2-305 through 40-2-310 reserved.

40-2-311. Rights of husband and wife — how governed. The property rights of the husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

History: En. Sec. 247, Civ. C. 1895; re-en. Sec. 3727, Rev. C. 1907; re-en. Sec. 5803, R.C.M. 1921; Cal. Civ. C. Sec. 177; re-en. Sec. 5803, R.C.M. 1935; R.C.M. 1947, 36-122.

40-2-312. Marriage settlement contracts — how executed. All contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

History: En. Sec. 248, Civ. C. 1895; re-en. Sec. 3728, Rev. C. 1907; re-en. Sec. 5804, R.C.M. 1921; Cal. Civ. C. Sec. 178; re-en. Sec. 5804, R.C.M. 1935; R.C.M. 1947, 36-123.

40-2-313. Contract to be acknowledged and recorded. When such contract is acknowledged or proved, it must be recorded in the office of the county clerk of every county in which any real estate which is granted or affected by such contract may be situated.

History: **En. Sec. 249, Civ. C. 1895; re-en. Sec. 3729, Rev. C. 1907; re-en. Sec. 5805, R.C.M. 1921; Cal. Civ. C. Sec. 179; re-en. Sec. 5805, R.C.M. 1935; R.C.M. 1947, 36-124.**

40-2-314. Effect of recording. The recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property.

History: **En. Sec. 250, Civ. C. 1895; re-en. Sec. 3730, Rev. C. 1907; re-en. Sec. 5806, R.C.M. 1921; Cal. Civ. C. Sec. 180; re-en. Sec. 5806, R.C.M. 1935; R.C.M. 1947, 36-125.**

40-2-315. Marriage settlement by minors. A minor capable of contracting marriage may make a valid marriage settlement, as herein provided.

History: **En. Sec. 251, Civ. C. 1895; re-en. Sec. 3731, Rev. C. 1907; re-en. Sec. 5807, R.C.M. 1921; Cal. Civ. C. Sec. 181; re-en. Sec. 5807, R.C.M. 1935; R.C.M. 1947, 36-126.**

Part 4

Battered Spouses Grant Programs

40-2-401. Battered spouses and domestic violence grant program created. There is a grant program established within the department of social and rehabilitation services for the allocation of grant money to local battered spouses and domestic violence programs.

History: **En. Sec. 1, Ch. 677, L. 1979.**

40-2-402. Duties of department. The department of social and rehabilitation services:

(1) shall adopt rules necessary to carry out the purposes of this part;

(2) may spend no more than 5% of the appropriated funds for administrative costs of the program;

(3) shall accept federal funds that may be available for use in carrying out the provisions of this part;

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to battered spouses and domestic violence.

History: **En. Sec. 5, Ch. 677, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent adopted with HB 868 (Ch. 677, L. 1979) provided: "The rules necessary to effectuate this act include those:

(1) establishing criteria for a project's eligibility to receive grants according to section 3;

(2) establishing criteria for services to be included in the program under section 4;

(3) providing procedures for application for grants;

(4) providing for distribution of grant funds."

40-2-403. Authorized grantees — criteria for grants. (1) The department of social and rehabilitation services must award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

(a) demonstrated need;
(b) project merit;
(c) administrative design; and
(d) efficiency of administration.

History: **En. Sec. 3, Ch. 677, L. 1979.**

40-2-404. Authorized services of programs. Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(1) counseling for victims or their spouses;

(2) shelters or safe homes for victims;

(3) advocacy programs that assist victims in obtaining services and information; and

(4) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

History: **En. Sec. 4, Ch. 677, L. 1979.**

40-2-405. Funding. (1) Revenue from the marriage license fee is the primary source of funding for the battered spouses and domestic violence program. Sixteen dollars of the marriage license fee is to be retained by the county in which the fee is collected to defray the county costs of administration and $9 of the marriage license fee is to be deposited in the general fund.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: **En. Sec. 2, Ch. 677, L. 1979.**

CHAPTER 3

RECONCILIATION

Part 1 — Montana Conciliation Law

Section
40-3-101. Citation.
40-3-102. Purposes.
40-3-103. Use of shall and may.
40-3-104. Application.
Sections 40-3-105 through 40-3-110 reserved.
40-3-111. Conciliation court — jurisdiction.
40-3-112. Selection of judges.
40-3-113. Transfer of cases.
40-3-114. Budget.
40-3-115. Probation officers' duties.
40-3-116. Privacy of hearings.
Sections 40-3-117 through 40-3-120 reserved.
40-3-121. Filing of petition.
40-3-122. Petition form and contents.
40-3-123. No fees.
40-3-124. Manner of conciliation.
40-3-125. Hearings.
40-3-126. Orders — reconciliation agreement.
40-3-127. Divorce, annulment, or separate maintenance proceeding — effect on.

Part 1

Montana Conciliation Law

40-3-101. Citation. This chapter may be cited as the "Montana Conciliation Law".

History: En. Sec. 1, Ch. 238, L. 1963; R.C.M. 1947, 36-201.

40-3-102. Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(1).

40-3-103. Use of shall and may. As used in this chapter "shall" is mandatory and "may" is permissive.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(2).

40-3-104. Application. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(3).

40-3-105 through 40-3-110 reserved.

40-3-111. Conciliation court — jurisdiction. (1) Each district court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court".

(2) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(3) Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for dissolution, annulment, or separate maintenance but there is no minor child whose welfare may be affected by the results of the controversy and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner

as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

(4) The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, Title 3, chapter 5, parts 1 through 4, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: (1), (4)En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; Sec. 36-203, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; Sec. 36-204, R.C.M. 1947; R.C.M. 1947, 36-203(1), (8), 36-204(1), (13).

40-3-112. Selection of judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(2).

40-3-113. Transfer of cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(3).

40-3-114. Budget. The provisions of the county budget system, Title 7, chapter 6, part 23, shall, except as provided by 40-3-125(3), be applicable to expenditures for the court of conciliation.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(4); amd. Sec. 3, Ch. 405, L. 1979.

40-3-115. Probation officers' duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested and, in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(6).

40-3-116. Privacy of hearings. (1) All district court hearings or conferences in proceedings under this chapter shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his counsel separately. In the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

History: **En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(7).**

40-3-117 through 40-3-120 reserved.

40-3-121. Filing of petition. Prior to the filing of any action for dissolution, annulment, or separate maintenance, either spouse or both spouses may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

History: **En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(2).**

40-3-122. Petition form and contents. (1) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of ....

Upon the petition of .... Petitioner	Petition for Conciliation (Under the Conciliation Court Law)
And concerning .... and .... Respondents.	

To the Conciliation Court:

(2) The petition shall:

(a) allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) state the name and age of each minor child whose welfare may be affected by the controversy;

(c) state the name and address of the petitioner or the names and addresses of the petitioners;

(d) if the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

(e) also name as a respondent any other person who has any relation to the controversy and state the address of the person, if known to the petitioner;

(f) state such other information as the court may by rule require.

(3) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such

petition when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(3) thru (5).

40-3-123. No fees. No fee may be charged by any officer for filing the petition nor may any fee be charged by any officer for the performance of any duty pursuant to this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(6).

40-3-124. Manner of conciliation. (1) The judge of the conciliation court may hear all matters invoked under this chapter, or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

(2) The conciliation counselor shall:

(a) hold conciliation conferences with parties to, and hearings in, proceedings under this chapter and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(5).

40-3-125. Hearings. (1) The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(2) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(3) The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(7) thru (9).

40-3-126. Orders — reconciliation agreement. (1) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event may such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(2) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(10).

40-3-127. Divorce, annulment, or separate maintenance proceeding — effect on. (1) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for dissolution, annulment of marriage, or separate maintenance.

(2) If after the expiration of such period the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution, annulment of marriage, or separate maintenance. The pendency of a dissolution, annulment, or separate maintenance action may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(3) Whenever any action for dissolution, annulment of marriage, or separate maintenance is filed in the district court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(11), (12).

CHAPTER 4

TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT

Part 1 — Separation—Dissolution of Marriage

Section

40-4-101. Purposes.
40-4-102. Uniformity of application and construction.
40-4-103. Application of the Montana Rules of Civil Procedure.
40-4-104. Dissolution of marriage — legal separation.
40-4-105. Procedure — commencement — pleadings — abolition of existing defenses.
40-4-106. Temporary order or temporary injunction.
40-4-107. Irretrievable breakdown.
40-4-108. Decree.
40-4-109. Independence of provisions of decree or temporary order.
40-4-110. Costs — attorney's fees.

Part 2 — Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement.
40-4-202. Disposition of property.
40-4-203. Maintenance.
40-4-204. Child support.
40-4-205. Representation of child.
40-4-206. Payment of maintenance or support to court.
40-4-207. Assignments.
40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.
Sections 40-4-209 and 40-4-210 reserved.
40-4-211. Jurisdiction — commencement of proceedings.
40-4-212. Best interest of child.
40-4-213. Temporary orders.
40-4-214. Interviews.
40-4-215. Investigations and reports.
40-4-216. Hearings.
40-4-217. Visitation.
40-4-218. Judicial supervision.
40-4-219. Modification.
40-4-220. Affidavit practice.
40-4-221. Determination of custody upon death of custodial parent.

Part 1

Separation — Dissolution of Marriage

40-4-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) strengthen and preserve the integrity of marriage and safeguard family relationships;

(2) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(3) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(4) make reasonable provision for spouse and minor children during and after litigation; and

(5) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

40-4-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-4-103. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this capter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties but shall provide that it affects the status previously existing between the parties in the manner decreed.

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

40-4-104. Dissolution of marriage — legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property or provided for a separate, later hearing to complete these matters.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

History: En. 48-316 by Sec. 16, Ch. 536, L. 1975; R.C.M. 1947, 48-316.

40-4-105. Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. No decree may be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

History: En. 48-317 by Sec. 17, Ch. 536, L. 1975; amd. Sec. 10, Ch. 33, L. 1977; R.C.M. 1947, 48-317.

40-4-106. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(4) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(5) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(6) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208; and

(c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

History: En. 48-318 by Sec. 18, Ch. 536, L. 1975; R.C.M. 1947, 48-318.

40-4-107. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of chapter 3 of this title, known as the Montana Conciliation Law.

History: En. 48-319 by Sec. 19, Ch. 536, L. 1975; R.C.M. 1947, 48-319.

40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

History: **En. 48-320 by Sec. 20, Ch. 536, L. 1975; R.C.M. 1947, 48-320.**

40-4-202. Disposition of property. (1) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; antenuptial agreement of the parties; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In disposing of property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property disposition serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

History: **En. 48-321 by Sec. 21, Ch. 536, L. 1975; R.C.M. 1947, 48-321.**

of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored.

History: En. 48-328 by Sec. 28, Ch. 536, L. 1975; amd. Sec. 1, Ch. 174, L. 1977; R.C.M. 1947, 48-328.

40-4-109. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended but he may move the court to grant an appropriate order.

History: En. 48-329 by Sec. 29, Ch. 536, L. 1975; R.C.M. 1947, 48-329.

40-4-110. Costs — attorney's fees. The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 of this title and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

History: En. 48-327 by Sec. 27, Ch. 536, L. 1975; R.C.M. 1947, 48-327.

Part 2

Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

40-4-203. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs; and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

History: **En. 48-322 by Sec. 22, Ch. 536, L. 1975; R.C.M. 1947, 48-322.**

40-4-204. Child support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) the financial resources of the child;

(2) the financial resources of the custodial parent;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4) the physical and emotional condition of the child and his educational needs; and

(5) the financial resources and needs of the noncustodial parent.

History: **En. 48-323 by Sec. 23, Ch. 536, L. 1975; R.C.M. 1947, 48-323.**

40-4-205. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that if the responsible party is indigent, the costs shall be waived.

History: **En. 48-324 by Sec. 24, Ch. 536, L. 1975; R.C.M. 1947, 48-324; amd. Sec. 1, Ch. 93, L. 1979.**

40-4-206. Payment of maintenance or support to court. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

History: En. 48-325 by Sec. 25, Ch. 536, L. 1975; R.C.M. 1947, 48-325.

40-4-207. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding $1 as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

History: En. 48-326 by Sec. 26, Ch. 536, L. 1975; R.C.M. 1947, 48-326.

40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the

child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

History: En. 48-330 by Sec. 30, Ch. 536, L. 1975; R.C.M. 1947, 48-330; amd. Sec. 1, Ch. 464, L. 1979.

40-4-209 and 40-4-210 reserved.

40-4-211. Jurisdiction — commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsections (1)(a), (1)(b), or (1)(c) of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

History: En. 48-331 by Sec. 31, Ch. 536, L. 1975; amd. Sec. 11, Ch. 33, L. 1977; amd. Sec. 27, Ch. 537, L. 1977; R.C.M. 1947, 48-331.

Custody

40-4-212. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved.

History: En. 48-332 by Sec. 32, Ch. 536, L. 1975; R.C.M. 1947, 48-332.

40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

History: En. 48-333 by Sec. 33, Ch. 536, L. 1975; amd. Sec. 12, Ch. 33, L. 1977; R.C.M. 1947, 48-333; amd. Sec. 1, Ch. 410, L. 1979.

40-4-214. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

History: En. 48-334 by Sec. 34, Ch. 536, L. 1975; R.C.M. 1947, 48-334.

40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare department.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16 unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

History: En. 48-335 by Sec. 35, Ch. 536, L. 1975; R.C.M. 1947, 48-335.

40-4-216. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record.

History: En. 48-336 by Sec. 36, Ch. 536, L. 1975; R.C.M. 1947, 48-336.

40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the

court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

History: **En. 48-337 by Sec. 37, Ch. 536, L. 1975; R.C.M. 1947, 48-337; amd. Sec. 3, Ch. 17, L. 1979.**

40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the county welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

History: **En. 48-338 by Sec. 38, Ch. 536, L. 1975; R.C.M. 1947, 48-338.**

40-4-219. Modification. (1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(2) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(3) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

History: **En. 48-339 by Sec. 39, Ch. 536, L. 1975; R.C.M. 1947, 48-339; amd. Sec. 4, Ch. 127, L. 1979; amd. Sec. 2, Ch. 410, L. 1979.**

40-4-220. Affidavit practice. (1) A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order.

History: En. 48-340 by Sec. 40, Ch. 536, L. 1975; R.C.M. 1947, 48-340; amd. Sec. 3, Ch. 410, L. 1979.

40-4-221. Determination of custody upon death of custodial parent. (1) Upon the death of a parent granted custody of a child, custody shall pass to the noncustodial parent unless one or more parties named in subsection (2) request a custody hearing. The noncustodial parent shall be a party in any proceeding brought under this section.

(2) Upon the death of a parent granted custody of a child, any of the following parties may request a custody hearing and seek custody of the child:

(a) the noncustodial natural parent;

(b) the surviving spouse of the deceased custodial parent;

(c) a person nominated by the will of the deceased custodial parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of custody shall be governed by this part.

History: En. Secs. 1, 2, 3, Ch. 127, L. 1979.

CHAPTER 5

ENFORCEMENT OF SUPPORT

Part 1 — Uniform Reciprocal Enforcement of Support Act

Section

40-5-101. Short title.
40-5-102. Purposes.

40-5-103. Definitions.
40-5-104. Remedies additional to those now existing.
40-5-105. Extent of duties of support.
40-5-106. Interstate rendition.
40-5-107. Conditions of interstate rendition.
40-5-108. Choice of law.
40-5-109. Remedies of state or political subdivision furnishing support.
40-5-110. How duties of support enforced.
40-5-111. Jurisdiction.
40-5-112. Contents and filing of petition for support — venue.
40-5-113. Officials to represent obligee.
40-5-114. Petition for a minor.
40-5-115. Duty of initiating court.
40-5-116. Costs and fees.
40-5-117. Jurisdiction by arrest.
40-5-118. State information agency.
40-5-119. Duty of the court and officials of this state as responding state.
40-5-120. Further duties of court and officials in the responding state.
40-5-121. Hearing and continuance.
40-5-122. Immunity from criminal prosecution.
40-5-123. Husband and wife communications not privileged.
40-5-124. Rules of evidence — application.
40-5-125. Order of support.
40-5-126. Responding court to transmit copies to initiating court.
40-5-127. Additional powers of responding court.
40-5-128. Paternity.
40-5-129. Additional duties of responding court.
40-5-130. Additional duty of initiating court.
40-5-131. Proceedings not to be stayed — when.
40-5-132. Application of payments.
40-5-133. Effect of participation in proceeding.
40-5-134. Intrastate application.
40-5-135. Appeals.
40-5-136. Additional remedies.
40-5-137. Registration.
40-5-138. Registry of foreign support orders.
40-5-139. Official to represent obligee.
40-5-140. Registration procedure — notice.
40-5-141. Effect of registration — enforcement procedure.
40-5-142. Uniformity of interpretation.

Part 2 — Administrative Enforcement of Support for Dependent Children

40-5-201. Definitions.
40-5-202. Department of revenue — powers and duties regarding collection of support debt.
40-5-203. Support enforcement services.
40-5-204. Cooperation by person having custody of child.
40-5-205. Payment of support money collected to support enforcement and collections unit — notice.
40-5-206. Central unit for information and administration — cooperation enjoined — availability of records.
Sections 40-5-207 through 40-5-210 reserved.
40-5-211. Petition for support order by married parent with minor children receiving public assistance.
40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court.
40-5-213. Financial statements by parent whose absence is basis of application for public assistance — penalty.
40-5-214. Scale of suggested minimum contributions.
Sections 40-5-215 through 40-5-220 reserved.
40-5-221. Debt to state by natural or adoptive parents — limitations.
40-5-222. Support debt based upon subrogation to or assignment of judgment — notice — content — action to collect.

40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing.
40-5-224. Finding of support liability based upon payment of public assistance — warrant of distraint — bond to release warrant — action to collect.
40-5-225. Notice and finding of financial responsibility of responsible parent — administrative procedure.
40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of findings.
Sections 40-5-227 through 40-5-240 reserved.
40-5-241. Warrant of distraint — execution.
40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages.
40-5-243. Release of excess to debtor.
40-5-244. Banks and savings and loan associations — service effective only as to branch office served.
40-5-245. Satisfaction of debt after levy on property — redemption.
40-5-246. Release of distraint and return of seized property — effect.
Sections 40-5-247 through 40-5-250 reserved.
40-5-251. Debt payment schedule.
40-5-252. Interest on debts due — waiver.
40-5-253. Administrative findings and order — judicial review.
40-5-254. Statutory limitations.
40-5-255. Charging off child support debts as uncollectible.
40-5-256. Employee debtor rights protected — limitation.
40-5-257. Assignment of earnings to be honored — effect.

Part 1

Uniform Reciprocal Enforcement of Support Act

40-5-101. Short title. This part may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)".

History: En. Sec. 42, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-82.

40-5-102. Purposes. The purposes of this part are to improve and extend by reciprocal legislation the enforcement of duties of support.

History: En. Sec. 1, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-41.

40-5-103. Definitions. (1) "Court" means the district court of this state and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(2) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this part.

(4) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(5) "Law" includes both common and statutory law.

(6) "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political

subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "Register" means to file in the registry of foreign support orders.

(10) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(11) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(12) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced.

(13) "Responding court" means the court in which the responsive proceeding is commenced.

(14) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(15) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

History: En. Sec. 2, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-42.

40-5-104. Remedies additional to those now existing. The remedies herein provided are in addition to and not in substitution for any other remedies.

History: En. Sec. 3, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-43.

40-5-105. Extent of duties of support. Duties of support arising under the law of this state, when applicable under 40-5-108, bind the obligor present in this state regardless of the presence or residence of the obligee.

History: En. Sec. 4, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-44.

40-5-106. Interstate rendition. The governor of this state may:

(1) demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(2) surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this part apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state

or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

History: **En. Sec. 5, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-45.**

40-5-107. Conditions of interstate rendition. (1) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this part or that any proceeding would be of no avail.

(2) If, under a substantially similar law, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

History: **En. Sec. 6, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-46.**

40-5-108. Choice of law. Duties of support applicable under this part are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: **En. Sec. 7, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-47.**

40-5-109. Remedies of state or political subdivision furnishing support. If a state or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this part as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

History: **En. Sec. 8, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-48.**

40-5-110. How duties of support enforced. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this part, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

History: **En. Sec. 9, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-49.**

40-5-111. Jurisdiction. Jurisdiction of any proceeding under this part is vested in the district court.

History: **En. Sec. 10, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-50.**

40-5-112. Contents and filing of petition for support — venue. (1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition, the obligee shall also file with the court an affidavit as required by 53-4-248 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services in writing of the pending action.

(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

History: **En. Sec. 11, Ch. 237, L. 1969; amd. Sec. 6, Ch. 379, L. 1977; R.C.M. 1947, 93-2601-51; amd. Sec. 3, Ch. 33, L. 1979.**

40-5-113. Officials to represent obligee. If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, a county commissioner, or other local welfare officer shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: **En. Sec. 12, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-52.**

40-5-114. Petition for a minor. A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

History: **En. Sec. 13, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-53.**

40-5-115. Duty of initiating court. If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this part to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

History: En. Sec. 14, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-54.

40-5-116. Costs and fees. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

History: En. Sec. 15, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-55.

40-5-117. Jurisdiction by arrest. If the court of this state believes that the obligor may flee, it may:

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

History: En. Sec. 16, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-56.

40-5-118. State information agency. (1) The state department of social and rehabilitation services is designated as the state information agency under this part.

(2) It shall:

(a) compile a list of the courts and their addresses in this state having jurisdiction under this part and transmit it to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this part and a statement of their effective date to all other state information agencies.

(b) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this part; and

(c) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates, and copies of the reciprocal enforcement of support act it receives from courts or information agencies of other states.

(3) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made

to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act, as amended.

(4) After the deposit of three copies of the petition and certificate and one copy of the reciprocal enforcement of support act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the attorney general who may undertake the representation.

History: **En. Sec. 17, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-57.**

40-5-119. Duty of the court and officials of this state as responding state. (1) After the responding court receives copies of the petition, certificate, and reciprocal enforcement of support act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(3) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: **En. Sec. 18, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-58.**

40-5-120. Further duties of court and officials in the responding state. (1) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(2) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this part apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court, he shall forthwith notify the initiating court.

(3) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

History: **En. Sec. 19, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-59.**

40-5-121. Hearing and continuance. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

History: En. Sec. 20, Ch. 237, L. 1969; amd. Sec. 24, Ch. 33, L. 1977; R.C.M. 1947, 93-2601-60.

40-5-122. Immunity from criminal prosecution. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

History: En. Sec. 21, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-61.

40-5-123. Husband and wife communications not privileged. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this part. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History: En. Sec. 22, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-62.

40-5-124. Rules of evidence — application. In any hearing for the civil enforcement of this part, the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (40-5-128) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

History: En. Sec. 23, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-63.

40-5-125. Order of support. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this part shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

History: En. Sec. 24, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-64.

40-5-126. Responding court to transmit copies to initiating court. The responding court shall cause a copy of all support orders to be sent to the initiating court.

History: En. Sec. 25, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-65.

40-5-127. Additional powers of responding court. In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the clerk; and

(3) punish under the power of contempt the obligor who violates any order of the court.

History: En. Sec. 26, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-66.

40-5-128. Paternity. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

History: En. Sec. 27, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-67.

40-5-129. Additional duties of responding court. A responding court has the following duties which may be carried out through the clerk of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

History: En. Sec. 28, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-68.

40-5-130. Additional duty of initiating court. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

History: En. Sec. 29, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-69.

40-5-131. Proceedings not to be stayed — when. A responding court may not stay the proceeding or refuse a hearing under this part because of any pending or prior action or proceeding for separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

History: **En. Sec. 30, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-70; amd. Sec. 4, Ch. 33, L. 1979.**

40-5-132. Application of payments. A support order made by a court of this state pursuant to this part does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar law or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

History: **En. Sec. 31, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-71.**

40-5-133. Effect of participation in proceeding. Participation in any proceeding under this part does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

History: **En. Sec. 32, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-72.**

40-5-134. Intrastate application. This part applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

History: **En. Sec. 33, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-73.**

40-5-135. Appeals. If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) perfect an appeal to the proper appellate court if the support order was issued by a court of this state; or

(2) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

History: **En. Sec. 34, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-74.**

40-5-136. Additional remedies. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

History: **En. Sec. 35, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-75.**

40-5-137. Registration. The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

History: En. Sec. 36, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-76.

40-5-138. Registry of foreign support orders. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

History: En. Sec. 37, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-77.

40-5-139. Official to represent obligee. (1) If this state is acting either as a rendering or a registering state, the prosecuting attorney, upon the request of the court, a state department of social and rehabilitation services, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 38, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-78.

40-5-140. Registration procedure — notice. (1) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court:

(a) three certified copies of the order with all modifications thereof;

(b) one copy of the reciprocal enforcement of support act of the state in which the order was made; and

(c) a statement, verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered.

(2) Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this part.

(3) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

History: En. Sec. 39, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-79.

40-5-141. Effect of registration — enforcement procedure. (1) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

History: En. Sec. 40, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-80.

40-5-142. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 41, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-81.

Part 2

Administrative Enforcement of Support for Dependent Children

40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) "Department" means the department of revenue.

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(10) "Support debt" means the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support.

History: En. Sec. 1, Ch. 612, L. 1979.

Compiler's Comments

Severability. Sec. 30, Ch. 612, L. 1979, was a severability clause.

Statement of intent. The statement of intent adopted with SB 221 (Ch. 612, L. 1979) provided: "A statement of intent is required for Senate Bill 221 inasmuch as rulemaking authority is granted to the Department of Revenue.

Senate Bill 221 establishes administrative procedures to facilitate the enforcement of support for dependent children. These procedures provide the Department of Revenue with more effective and efficient procedures to ensure that dependent children are supported by those persons who under the law are primarily responsible for such support.

To enable the Department of Revenue to achieve the objectives of SB 221 rulemaking authority is granted as follows:

1. In general the Department of Revenue is authorized to "adopt and enforce such rules as may be necessary to carry out the provisions of [this act]" SB 221, section 2(9).
2. To limit the responsibility of the Department of Revenue to accept applications for support enforcement services on behalf of persons who are not recipients of public assistance. SB 221, sections 1 and 2.
3. To establish reasonable fees for support enforcement services provided to persons who are not recipients of public assistance. SB 221, section 3.
4. To adopt rules, based on ability to pay, defining the extent of the debt due and owing to the State of Montana by the natural or adoptive parent(s) responsible for the support of children who have received public assistance. Where a district court order establishes the level of support, the debt is limited to the amount provided for by the order. SB 221, section 12(4)."

40-5-202. Department of revenue — powers and duties regarding collection of support debt. (1) Whenever the department of social and rehabilitation services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly refer the matter to the department of revenue for action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance.

No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation shall apply to temporary spouse support orders and family maintenance orders up to the amount paid by the department in public assistance money to or for the benefit of a dependent child or children but allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or his authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

History: **En. Sec. 2, Ch. 612, L. 1979.**

40-5-203. Support enforcement services. (1) The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule reasonable standards necessary to limit applications for support enforcement services. These standards shall take into account the earnings, income, and other resources already available to support the person for whom a support obligation exists.

(3) The department may charge a fee as compensation for services rendered in establishment of or enforcement of support obligations. This fee shall be agreed on in writing with the parent, custodian, or guardian of the person for whom a support obligation is owed or that person if no parent, custodian, or guardian exists. An initiation fee as a portion of the collection fee may be charged the applicant by the department. The department shall by rule establish reasonable fees for support enforcement services, and the schedule of fees shall be made available to all applicants for support enforcement services. The department may, upon a showing of necessity, waive or defer any such fee.

History: **En. Sec. 3, Ch. 612, L. 1979.**

40-5-204. Cooperation by person having custody of child. Any person having the care, custody, or control of any dependent child or children shall cooperate with the department in establishing the paternity of such child and obtaining support payments.

History: En. Sec. 4, Ch. 612, L. 1979.

40-5-205. Payment of support money collected to support enforcement and collections unit — notice. If written notice by the department is given to the responsible person or to the clerk of the court, if appropriate, that the children for whom a support obligation exists are receiving public assistance, then any support money paid by the person or persons responsible for support as a result of any action shall be paid through the support enforcement and collections unit of the department of revenue.

History: En. Sec. 5, Ch. 612, L. 1979.

40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies all information and assistance as authorized by this part. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents.

(3) Any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act.

History: En. Sec. 10, Ch. 612, L. 1979.

40-5-207 through 40-5-210 reserved.

40-5-211. Petition for support order by married parent with minor children receiving public assistance. (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance in the absence of a support order may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the department may file a petition on behalf of the

parent. If satisfied that a just cause exists, the court shall direct that a citation be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

History: **En. Sec. 6, Ch. 612, L. 1979.**

40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court. (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

History: **En. Sec. 7, Ch. 612, L. 1979.**

40-5-213. Financial statements by parent whose absence is basis of application for public assistance — penalty. (1) Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall complete a statement, under oath, of his current monthly income, his total income over the past 36 months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses, and all other information pertinent to determining his ability to support his children. The statement shall be provided upon a demand made by the department. If assistance based upon the application is granted on behalf of the child, additional statements shall be filed as required by the department until the child is no longer receiving public assistance.

(2) Failure to comply with this section is a misdemeanor.

History: **En. Sec. 8, Ch. 612, L. 1979.**

40-5-214. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part. The scale shall:

(a) include consideration of gross income;

(b) authorize an expense deduction for determining net income;

(c) designate other available resources to be considered;

(d) specify the circumstances which should be considered in reducing support contributions on the basis of hardship.

(2) The department shall accept and compile pertinent and reliable information from any available source in order to establish a minimum scale of suggested contributions. Copies of the scale shall be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the minimum scale of suggested contribution.

(3) No county, court, officer, or agency may be required to use this scale.

History: **En. Sec. 9, Ch. 612, L. 1979.**

40-5-215 through 40-5-220 reserved.

40-5-221. Debt to state by natural or adoptive parents — limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing the state of Montana by the responsible parent or parents in an amount equal to the amount of public assistance money so paid. In the case of an adoptive parent or parents, no debt for public assistance paid may accrue prior to the date of adoption.

(2) Where there has been a district court order established, the debt shall be limited to the amount provided for by the order.

(3) Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and any state agency, the debt shall be limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the provisions of the order shall prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

History: **En. Sec. 11, Ch. 612, L. 1979.**

40-5-222. Support debt based upon subrogation to or assignment of judgment — notice — content — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt.

(3) Action to collect the subrogated or assigned support debt by distraint and seizure and sale shall be lawful after 20 days from the date of service upon the debtor or 20 days from the receipt or refusal by the debtor of the notice of debt.

History: **En. Sec. 12, Ch. 612, L. 1979.**

40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children.

The notice of liability shall be served upon the responsible parent in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible parent make answer within 20 days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before 20 days from the date of the service the support debt shall be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the responsible parent will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before 20 days of the date of service, the support debt shall be assessed and determined subject to the computation and the department shall issue a warrant of distraint authorizing a collection action under this part.

(4) If the responsible parent, within 20 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the responsible parent may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing shall establish the obligation of the responsible parent, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt.

History: **En. Sec. 13, Ch. 612, L. 1979.**

40-5-224. Finding of support liability based upon payment of public assistance — warrant of distraint — bond to release warrant — action to collect. (1) If the department reasonably believes that the parent is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may issue a warrant of distraint pursuant to 40-5-241 during the pendency of the fair hearing or thereafter, whether or not appealed. No further action may be taken on the warrant until final determination after fair hearing and/or appeal. The department shall in such cases make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The responsible parent may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or thereafter, and in such case warrants issued shall be released. If the decision resulting from the hearing is in favor of the responsible parent, all warrants issued shall be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing.

History: **En. Sec. 14, Ch. 612, L. 1979.**

40-5-225. Notice and finding of financial responsibility of responsible parent — administrative procedure. (1) In lieu of the procedures provided in 40-5-223 and 40-5-224, the department may, in the absence of a district court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause at a hearing held by the department why the finding of liability and the amount of support liability should not be finally ordered. This notice and finding shall relate to the support debt accrued or accruing under this part and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to this part and the rules of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than 20 days from the date of service to request in writing a hearing, notice of which shall be served upon the department personally or by registered or certified mail. If no request is made, the notice and finding of financial responsibility becomes final. If a request is made, the execution of notice and finding of financial responsibility shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision.

(3) The notice and finding of financial responsibility shall include:

(a) the amount the department has determined the responsible parent owes, the support debt accrued or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged and the ability of the responsible parent to pay all or any portion of the debt;

(b) a statement of the name of the recipient or custodian and the name of any child for whom assistance is being paid or need is alleged; or a statement of the amount of periodic future support payments for which financial responsibility is found;

(c) a statement that the responsible parent may object to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

(d) a statement that if the responsible parent fails to request a hearing, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject to distraint and seizure and sale to satisfy the debt.

History: **En. Sec. 15, Ch. 612, L. 1979.**

40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of findings. (1) The administrative hearing is defined as a "contested case".

(2) The administrative hearing may be held in the county of residence or other county convenient to the responsible parent.

(3) If a hearing is requested, it shall be scheduled within 30 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the alleged responsible parent under 40-5-221 and shall also determine the amount of periodic payments to be made to satisfy past, present, or future liability under 40-5-221. In making these determinations, the hearing officer shall include in his consideration the scale of suggested minimum contributions adopted under 40-5-214.

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection action. Within 20 days of entry of the order, the responsible parent may petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 days of the hearing, enter findings, conclusions, and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to 40-5-253 and shall limit the support debt under 40-5-221 to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is superseded upon entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner of a summons in a civil action. A hearing shall be set not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(8) The department, in its original determinations, and the hearing officer, in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated for determination of support payments used by the district court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this part without further necessity of action by the hearing officer.

History: En. Sec. 16, Ch. 612, L. 1979.

40-5-227 through 40-5-240 reserved.

40-5-241. Warrant of distraint — execution. (1) Twenty-one days after receipt or refusal of notice of debt under provisions of 40-5-222 or 21 days after service of notice of debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue an abstract of any final order in the form of a warrant of distraint under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the support debt within his county for the payment of the debt, interest, and cost of executing the warrant and to return the warrant to the department and pay to it the money collected within 60 days from the date of the issuance of the warrant.

(2) The sheriff shall, within 5 days after the receipt of the warrant, file a copy of the warrant with the clerk of the district court of his county and the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the debtor mentioned in the warrant and, in appropriate columns, the amount of the support debt and the date when such copy is filed. The amount of the warrant so docketed is a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. This lien has the same preference against the assets of the debtor as claims for taxes.

(3) The sheriff shall proceed to levy upon and sell the property of the debtor in the same manner prescribed by law for executions issued against property upon judgments of a court of record and is entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

(4) If the net proceeds of the sale, upon application to the debt claimed, do not satisfy the debt in full, the department shall have judgment for any deficiency remaining unsatisfied.

History: En. Sec. 17, Ch. 612, L. 1979.

40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages. Should any person, firm, corporation, association, political subdivision, or department of the state fail or refuse to deliver property pursuant to the order; or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under 40-5-241 or fail or refuse to honor an assignment of wages presented by the department, the person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the debt which is the basis of the distraint or assignment of wages or the value of the distrained property, whichever is less, together with costs, interest, and reasonable attorney fees.

History: En. Sec. 18, Ch. 612, L. 1979.

40-5-243. Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person, firm, corporation, association, political subdivision, or department of the state may, without liability under this part, release the excess to the debtor.

History: **En. Sec. 19, Ch. 612, L. 1979.**

40-5-244. Banks and savings and loan associations — service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

History: **En. Sec. 20, Ch. 612, L. 1979.**

40-5-245. Satisfaction of debt after levy on property — redemption. Any person owning real property or any interest in real property against which a warrant of distraint has been issued and levied upon may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the sheriff shall restore the property to him, and all further proceedings on the warrant shall cease. The person shall also have the right within 240 days after sale of property levied upon to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state.

History: **En. Sec. 21, Ch. 612, L. 1979.**

40-5-246. Release of distraint and return of seized property — effect. The department may at any time release a distraint on all or part of the property of the debtor or order the sheriff to return seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the the same or other property.

History: **En. Sec. 23, Ch. 612, L. 1979.**

40-5-247 through 40-5-250 reserved.

40-5-251. Debt payment schedule. The department may at any time after notice to the debtor set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the debtor.

History: **En. Sec. 22, Ch. 612, L. 1979.**

40-5-252. Interest on debts due — waiver. Interest on any support debt due and owing to the department at the statutory interest rate payable on judgments recovered in the courts of this state under 40-5-221 may be collected by the department. No provision of this part may be construed to require the department to maintain interest balance due accounts, and interest may be waived by the department, if waiver would facilitate the collection of the debt.

History: **En. Sec. 24, Ch. 612, L. 1979.**

40-5-253. Administrative findings and order — judicial review. (1) It is the intent of this part that administrative findings and orders be subject to judicial review but that administrative remedies be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Such review shall be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in this part may be construed to abridge or in any way affect the defendant's right to counsel during any and all judicial or administrative proceedings pursuant to this part.

History: En. Sec. 25, Ch. 612, L. 1979.

40-5-254. Statutory limitations. Debts ensuing as a result of determinations made through the administrative procedures described in this part are subject to statutory limitations as set forth in Title 27, chapter 2.

History: En. Sec. 26, Ch. 612, L. 1979.

40-5-255. Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. In the event a warrant of distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien. At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant of distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period.

History: En. Sec. 27, Ch. 612, L. 1979.

40-5-256. Employee debtor rights protected — limitation. No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant of distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months.

History: En. Sec. 28, Ch. 612, L. 1979.

40-5-257. Assignment of earnings to be honored — effect. Any person, firm, corporation, association, political subdivision, or department of the state employing a person owing a support debt or obligation shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to court order, presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department. Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

History: **En. Sec. 29, Ch. 612, L. 1979.**

CHAPTER 6

PARENT AND CHILD

Part 1 — Uniform Parentage Act

Section

40-6-101. Short title.
40-6-102. Parent and child relationship defined.
40-6-103. Relationship not dependent on marriage.
40-6-104. How parent and child relationship established.
40-6-105. Presumption of paternity.
40-6-106. Artificial insemination.
40-6-107. Determination of father and child relationship — who may bring action.
40-6-108. Statute of limitations.
40-6-109. Jurisdiction — venue.
40-6-110. Parties.
40-6-111. Pretrial proceedings.
40-6-112. Blood tests.
40-6-113. Evidence relating to paternity.
40-6-114. Pretrial recommendations.
40-6-115. Civil action.
40-6-116. Judgment or order.
40-6-117. Enforcement of judgment or order.
40-6-118. Modification of judgment or order.
40-6-119. Rights to counsel — free transcript on appeal.
40-6-120. Hearings and records — confidentiality.
40-6-121. Action to declare mother and child relationship.
40-6-122. Promise to render support.
40-6-123. Birth records.
40-6-124. Form, execution, and revocation of releases — termination of parents' or guardians' rights.
40-6-125. Children born out of wedlock — release — consent.
40-6-126. Notice of intent to claim paternity.
40-6-127. Expected child — intent to release or consent — petition and notice.
40-6-128. Proceeding to determine father's identity and terminate rights.
40-6-129. Grounds for termination of father's rights.
40-6-130. Best interests of the child — custody to father — legitimation.
40-6-131. Uniformity of application and construction.

Part 2 — Obligations of Parents

40-6-201. Legitimacy of children born in wedlock.
40-6-202. Legitimacy of children born after dissolution of marriage.
40-6-203. Child legitimatized by marriage of parents.
Sections 40-6-204 through 40-6-210 reserved.
40-6-211. Obligations of parents for the support and education of their children.
40-6-212. Allowance to parent.
40-6-213. Remedy when parent dies without providing for support of child.
40-6-214. Reciprocal duties of parents and children in maintaining each other.
40-6-215. When parent liable for necessaries supplied to child.

40-6-216. When parent not liable for support furnished child.
40-6-217. Married person not bound for support of spouse's children by former marriage.
40-6-218. Compensation and support of person after attaining majority.
Sections 40-6-219 and 40-6-220 reserved.
40-6-221. Custody, services, and earnings of child.
40-6-222. Custody of children where husband and wife living separate.
40-6-223. When parent may bring action for the exclusive control of children — decree.
40-6-224. When custody may be awarded without dissolution proceedings.
Sections 40-6-225 through 40-6-230 reserved.
40-6-231. Right of parent to determine the residence of child.
40-6-232. Parental control over property of child.
40-6-233. Remedy for parental abuse.
40-6-234. When parental authority ceases.
40-6-235. Parent may relinquish services and custody of child.
40-6-236. Wages of minors.
40-6-237. Destruction of property by minor — liability of parents.
40-6-238. Limitation on amount of recovery.

Part 3 — Obligations of Children

40-6-301. Duty of child to support indigent parents.
40-6-302. Failure to support — misdemeanor.
40-6-303. Civil action to enforce duty to support.

Part 1

Uniform Parentage Act

40-6-101. Short title. This part may be cited as the "Uniform Parentage Act".

History: **En. 61-301 by Sec. 1, Ch. 512, L. 1975; R.C.M. 1947, 61-301.**

40-6-102. Parent and child relationship defined. As used in this part, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

History: **En. 61-302 by Sec. 2, Ch. 512, L. 1975; R.C.M. 1947, 61-302.**

40-6-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

History: **En. 61-303 by Sec. 3, Ch. 512, L. 1975; R.C.M. 1947, 61-303.**

40-6-104. How parent and child relationship established. The parent and child relationship between a child and:

(1) the natural mother may be established by proof of her having given birth to the child or under this part;

(2) the natural father may be established under this part;

(3) an adoptive parent may be established by proof of adoption.

History: **En. 61-304 by Sec. 4, Ch. 512, L. 1975; R.C.M. 1947, 61-304.**

40-6-105. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides; or

(ii) with his consent, he is named as the child's father on the child's birth certificate; or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

History: En. 61-305 by Sec. 5, Ch. 512, L. 1975; R.C.M. 1947, 61-305.

40-6-106. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of health and environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

History: En. 61-306 by Sec. 6, Ch. 512, L. 1975; R.C.M. 1947, 61-306.

40-6-107. Determination of father and child relationship — who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

History: En. 61-307 by Sec. 7, Ch. 512, L. 1975; R.C.M. 1947, 61-307.

40-6-108. Statute of limitations. (1) An action may be commenced:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1);

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105 may not be brought later than 3 years after the birth of the child.

(4) Sections 40-6-107 and 40-6-108 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(5) After the conclusion of an adoption proceeding under chapter 8, Title 40, no further action to declare the existence or nonexistence of the father

and child relationship of the adopted child may be commenced, except as provided in 40-8-112.

History: En. 61-308 by Sec. 8, Ch. 512, L. 1975; R.C.M. 1947, 61-308; amd. Sec. 5, Ch. 33, L. 1979.

40-6-109. Jurisdiction — venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

History: En. 61-309 by Sec. 9, Ch. 512, L. 1975; amd. Sec. 21, Ch. 33, L. 1977; R.C.M. 1947, 61-309.

40-6-110. Parties. The child shall be made a party to the action. If he is a minor, he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of social and rehabilitation services or the appropriate county welfare department as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

History: En. 61-310 by Sec. 10, Ch. 512, L. 1975; R.C.M. 1947, 61-310.

40-6-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

History: En. 61-311 by Sec. 11, Ch. 512, L. 1975; R.C.M. 1947, 61-311.

40-6-112. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests.

The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts.

History: En. 61-312 by Sec. 12, Ch. 512, L. 1975; R.C.M. 1947, 61-312.

40-6-113. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

History: En. 61-313 by Sec. 13, Ch. 512, L. 1975; R.C.M. 1947, 61-313.

40-6-114. Pretrial recommendations. (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, then the instant action shall be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

History: En. 61-314 by Sec. 14, Ch. 512, L. 1975; R.C.M. 1947, 61-314.

40-6-115. Civil action. (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

History: En. 61-315 by Sec. 15, Ch. 512, L. 1975; R.C.M. 1947, 61-315.

40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others; and

(i) the value of services contributed by the custodial parent.

History: En. 61-316 by Sec. 16, Ch. 512, L. 1975; R.C.M. 1947, 61-316.

40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

History: En. 61-318 by Sec. 18, Ch. 512, L. 1975; R.C.M. 1947, 61-318.

40-6-118. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order:

(1) for future education and support; and

(2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117(2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under 40-6-116(4) may specify that the judgment or order may not be modified or revoked.

History: En. 61-319 by Sec. 19, Ch. 512, L. 1975; R.C.M. 1947, 61-319.

40-6-119. Rights to counsel — free transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: En. 61-320 by Sec. 20, Ch. 512, L. 1975; R.C.M. 1947, 61-320.

40-6-120. Hearings and records — confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this part shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-321 by Sec. 21, Ch. 512, L. 1975; R.C.M. 1947, 61-321.

40-6-121. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

History: En. 61-322 by Sec. 22, Ch. 512, L. 1975; R.C.M. 1947, 61-322.

40-6-122. Promise to render support. (1) Any promise in writing to furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 40-6-107(4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: En. 61-323 by Sec. 23, Ch. 512, L. 1975; amd. Sec. 22, Ch. 33, L. 1977; R.C.M. 1947, 61-323.

40-6-123. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-324 by Sec. 24, Ch. 512, L. 1975; R.C.M. 1947, 61-324.

40-6-124. Form, execution, and revocation of releases — termination of parents' or guardians' rights. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by formally executing a release whereby all parental rights to the child are voluntarily relinquished to an agency of the state of Montana, a licensed adoption agency, or a person.

(2) Except as otherwise provided in this section, a release shall be by a separate instrument executed before a notary public.

(3) If the person from whom a release is required is a member of any of the armed services or is in prison, the release may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the release is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the release was executed in accordance with the laws of that state or country and may not proceed unless it finds that the release was so executed.

(5) Upon the filing of the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana, the licensed adoption agency, or the person to whom the release was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of the person or persons who executed the release and of the agency of the state of Montana, licensed adoption agency, or person to whom the child was released, the court with which the release was filed may grant a hearing to consider whether the release should be revoked. A release may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to a petition to revoke a release shall be made.

History: **En. 61-328 by Sec. 1, Ch. 422, L. 1977; R.C.M. 1947, 61-328.**

40-6-125. Children born out of wedlock — release — consent. (1) If the mother of a child born out of wedlock proposes to release the child for adoption and the release or consent of the natural father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a release terminating her rights to the child. If the mother releases the child, the agency of the state of Montana, the licensed adoption agency, or the person to whom the child is released may file a petition under this part or a petition of dependency or neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her formal execution of a release shall be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this part.

History: **En. 61-329 by Sec. 2, Ch. 422, L. 1977; R.C.M. 1947, 61-329.**

40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 shall be presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. Such notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

History: **En. 61-330 by Sec. 3, Ch. 422, L. 1977; R.C.M. 1947, 61-330.**

40-6-127. Expected child — intent to release or consent — petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana Rules of Civil Procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 40-6-126 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 40-6-126(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 40-6-126(3) and constitutes a denial of his interest in the custody of the

HAROLD H. HARRISON
ATTORNEY AT LAW

child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

History: En. 61-331 by Sec. 4, Ch. 422, L. 1977; R.C.M. 1947, 61-331.

40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following:

(a) whether the mother was married at the time of conception of the child or at any time thereafter;

(b) whether the mother was cohabiting with a man at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or

(d) whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this part may be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) shall be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing need not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

History: En. 61-332 by Sec. 5, Ch. 422, L. 1977; R.C.M. 1947, 61-332.

40-6-129. Grounds for termination of father's rights. (1) If the court has proof that the person whom it determines pursuant to 40-6-128 to be the father of the child was timely served with notice of intent to release pursuant to 40-6-127 or was served with or waived the notice of hearing required by 40-6-128(5), the court may permanently terminate the rights of the putative father if the putative father:

(a) submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child.

(c) was served with a notice of intent to release in accordance with 40-6-127(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) is given proper notice of hearing in accordance with subsection (5) or (7) of 40-6-128 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may

terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitalization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 40-6-128.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

History: **En. 61-333 by Sec. 6, Ch. 422, L. 1977; R.C.M. 1947, 61-333.**

40-6-130. Best interests of the child — custody to father — legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to whom the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this part or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

History: **En. 61-334 by Sec. 7, Ch. 422, L. 1977; R.C.M. 1947, 61-334.**

40-6-131. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: **En. 61-327 by Sec. 29, Ch. 512, L. 1975; R.C.M. 1947, 61-327.**

Part 2

Obligations of Parents

40-6-201. Legitimacy of children born in wedlock. All children born in wedlock are presumed to be legitimate.

History: **En. Sec. 280, Civ. C. 1895; re-en. Sec. 3738, Rev. C. 1907; re-en. Sec. 5830, R.C.M. 1921; Cal. Civ. C. Sec. 193; Field Civ. C. Sec. 86; re-en. Sec. 5830, R.C.M. 1935; R.C.M. 1947, 61-101.**

40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of her marriage, are presumed to be legitimate children of that marriage.

History: En. Sec. 281, Civ. C. 1895; re-en. Sec. 3739, Rev. C. 1907; re-en. Sec. 5831, R.C.M. 1921; Cal. Civ. C. Sec. 194; Based on Field Civ. C. Sec. 87; re-en. Sec. 5831, R.C.M. 1935; R.C.M. 1947, 61-102.

40-6-203. Child legitimatized by marriage of parents. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

History: En. Sec. 11, p. 410, Bannack Stat.; re-en. Sec. 11, p. 521, Cod. Stat. 1871; re-en. Sec. 864, 5th Div. Rev. Stat. 1879; re-en. Sec. 1425, 5th Div. Comp. Stat. 1887; amd. Sec. 302, Civ. C. 1895; re-en. Sec. 3760, Rev. C. 1907; re-en. Sec. 5852, R.C.M. 1921; Cal. Civ. C. Sec. 215; re-en. Sec. 5852, R.C.M. 1935; R.C.M. 1947, 61-123.

40-6-204 through 40-6-210 reserved.

40-6-211. Obligations of parents for the support and education of their children. The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances.

History: En. Sec. 283, Civ. C. 1895; re-en. Sec. 3741, Rev. C. 1907; re-en. Sec. 5833, R.C.M. 1921; Cal. Civ. C. Sec. 196; Field Civ. C. Sec. 89; re-en. Sec. 5833, R.C.M. 1935; amd. Sec. 21, Ch. 293, L. 1975; R.C.M. 1947, 61-104.

40-6-212. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child out of the child's property for the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for the child's benefit.

History: En. Sec. 288, Civ. C. 1895; re-en. Sec. 3746, Rev. C. 1907; re-en. Sec. 5838, R.C.M. 1921; Cal. Civ. C. Sec. 201; Field Civ. C. Sec. 92; re-en. Sec. 5838, R.C.M. 1935; amd. Sec. 14, Ch. 33, L. 1977; R.C.M. 1947, 61-109.

40-6-213. Remedy when parent dies without providing for support of child. If a parent chargeable with the support of a child dies leaving the child chargeable to the county and leaving an estate sufficient for the child's support, the county commissioners of the county may claim provision for the child's support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against that estate and against the heirs, devisees, and the next of kin of the parent.

History: En. Sec. 292, Civ. C. 1895; re-en. Sec. 3750, Rev. C. 1907; re-en. Sec. 5842, R.C.M. 1921; Cal. Civ. C. Sec. 205; Based on Field Civ. C. Sec. 96; re-en. Sec. 5842, R.C.M. 1935; amd. Sec. 15, Ch. 33, L. 1977; R.C.M. 1947, 61-113.

40-6-214. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

History: En. Sec. 293, Civ. C. 1895; re-en. Sec. 3751, Rev. C. 1907; re-en. Sec. 5843, R.C.M. 1921; Cal. Civ. C. Sec. 206; Field Civ. C. Sec. 97; re-en. Sec. 5843, R.C.M. 1935; R.C.M. 1947, 61-114.

40-6-215. When parent liable for necessaries supplied to child. If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

History: En. Sec. 294, Civ. C. 1895; re-en. Sec. 3752, Rev. C. 1907; re-en. Sec. 5844, R.C.M. 1921; Cal. Civ. C. Sec. 207; Field Civ. C. Sec. 98; re-en. Sec. 5844, R.C.M. 1935; R.C.M. 1947, 61-115.

40-6-216. When parent not liable for support furnished child. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child, without an agreement for compensation, or to compensate a stranger for the support of a child who has abandoned the parent without just cause.

History: En. Sec. 295, Civ. C. 1895; re-en. Sec. 3753, Rev. C. 1907; re-en. Sec. 5845, R.C.M. 1921; Cal. Civ. C. Sec. 208; Field Civ. C. Sec. 99; re-en. Sec. 5845, R.C.M. 1935; R.C.M. 1947, 61-116.

40-6-217. Married person not bound for support of spouse's children by former marriage. A married person is not bound to support his spouse's children by a former marriage; but if he receives them into his family and supports them, it is presumed that he does so as a parent and, where such is the case, they are not liable to him for their support nor he to them for their services.

History: En. Sec. 296, Civ. C. 1895; re-en. Sec. 3754, Rev. C. 1907; re-en. Sec. 5846, R.C.M. 1921; Cal. Civ. C. Sec. 209; Field Civ. C. Sec. 100; re-en. Sec. 5846, R.C.M. 1935; amd. Sec. 22, Ch. 293, L. 1975; R.C.M. 1947, 61-117.

40-6-218. Compensation and support of person after attaining majority. Where a person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

History: En. Sec. 297, Civ. C. 1895; re-en. Sec. 3755, Rev. C. 1907; re-en. Sec. 5847, R.C.M. 1921; Cal. Civ. C. Sec. 210; Field Civ. C. Sec. 101; re-en. Sec. 5847, R.C.M. 1935; amd. Sec. 16, Ch. 33, L. 1977; R.C.M. 1947, 61-118.

40-6-219 and 40-6-220 reserved.

40-6-221. Custody, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child, unless custody is determined otherwise pursuant to 40-4-221.

History: En. Sec. 284, Civ. C. 1895; re-en. Sec. 3742, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1915; re-en. Sec. 5834, R.C.M. 1921; Cal. Civ. C. Sec. 197; Based on Field Civ. C. Sec. 90; re-en. Sec. 5834, R.C.M. 1935; amd. Sec. 26, Ch. 512, L. 1975; amd. Sec. 13, Ch. 33, L. 1977; R.C.M. 1947, 61-105; amd. Sec. 5, Ch. 127, L. 1979.

40-6-222. Custody of children where husband and wife living separate. The husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage while such husband and wife live separate and apart from each other.

History: En. Sec. 285, Civ. C. 1895; re-en. Sec. 3743, Rev. C. 1907; re-en. Sec. 5835, R.C.M. 1921; Cal. Civ. C. Sec. 198; re-en. Sec. 5835, R.C.M. 1935; R.C.M. 1947, 61-106.

40-6-223. When parent may bring action for the exclusive control of children — decree. Without application for divorce, the husband or wife may bring an action for the exclusive control of the children of the marriage, and the court or judge may, during the pendency of such action or at the final hearing thereof or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interests of the children and may at any time thereafter amend, vary, or modify such order or decree as the natural rights and the interests of the parties, including the children, may require.

History: En. Sec. 286, Civ. C. 1895; re-en. Sec. 3744, Rev. C. 1907; re-en. Sec. 5836, R.C.M. 1921; Cal. Civ. C. Sec. 199; re-en. Sec. 5836, R.C.M. 1935; R.C.M. 1947, 61-107.

40-6-224. When custody may be awarded without dissolution proceedings. When a husband and wife live in a state of separation without the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either for such time and under such regulations as the case may require.

History: En. Sec. 301, Civ. C. 1895; re-en. Sec. 3759, Rev. C. 1907; re-en. Sec. 5851, R.C.M. 1921; Cal. Civ. C. Sec. 214; Field Civ. C. Sec. 106; re-en. Sec. 5851, R.C.M. 1935; amd. Sec. 17, Ch. 33, L. 1977; R.C.M. 1947, 61-122.

40-6-225 through 40-6-230 reserved.

40-6-231. Right of parent to determine the residence of child. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

History: En. Sec. 300, Civ. C. 1895; re-en. Sec. 3758, Rev. C. 1907; re-en. Sec. 5850, R.C.M. 1921; Cal. Civ. C. Sec. 213; Field Civ. C. Sec. 104; re-en. Sec. 5850, R.C.M. 1935; R.C.M. 1947, 61-121.

40-6-232. Parental control over property of child. The parent, as such, has no control over the property of the child.

History: En. Sec. 289, Civ. C. 1895; re-en. Sec. 3747, Rev. C. 1907; re-en. Sec. 5839, R.C.M. 1921; Cal. Civ. C. Sec. 202; Field Civ. C. Sec. 93; re-en. Sec. 5839, R.C.M. 1935; R.C.M. 1947, 61-110.

40-6-233. Remedy for parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced.

History: En. Sec. 290, Civ. C. 1895; re-en. Sec. 3748, Rev. C. 1907; re-en. Sec. 5840, R.C.M. 1921; Cal. Civ. C. Sec. 203; Based on Field Civ. C. Sec. 94; re-en. Sec. 5840, R.C.M. 1935; R.C.M. 1947, 61-111.

40-6-234. When parental authority ceases. The authority of the parent ceases:

(1) upon the appointment, by a court, of a guardian of the person of a child;

(2) upon the marriage of a child; or

(3) upon its attaining majority.

History: En. Sec. 291, Civ. C. 1895; re-en. Sec. 3749, Rev. C. 1907; re-en. Sec. 5841, R.C.M. 1921; Cal. Civ. C. Sec. 204; Field Civ. C. Sec. 95; re-en. Sec. 5841, R.C.M. 1935; R.C.M. 1947, 61-112.

40-6-235. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

History: En. Sec. 298, Civ. C. 1895; re-en. Sec. 3756, Rev. C. 1907; re-en. Sec. 5848, R.C.M. 1921; Cal. Civ. C. Sec. 211; Field Civ. C. Sec. 102; re-en. Sec. 5848, R.C.M. 1935; R.C.M. 1947, 61-119.

40-6-236. Wages of minors. The wages of a minor employed in service may be paid him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

History: En. Sec. 299, Civ. C. 1895; re-en. Sec. 3757, Rev. C. 1907; re-en. Sec. 5849, R.C.M. 1921; Cal. Civ. C. Sec. 212; Based on Field Civ. C. Sec. 103; re-en. Sec. 5849, R.C.M. 1935; R.C.M. 1947, 61-120.

40-6-237. Destruction of property by minor — liability of parents. Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed $1,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1.

40-6-238. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed $1,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed $100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971; amd. Sec. 2, Ch. 227, L. 1977; R.C.M. 1947, 61-112.2.

Part 3

Obligations of Children

40-6-301. Duty of child to support indigent parents. It is hereby declared and made the duty of every adult child, having the ability so to do, to furnish and provide necessary food, clothing, shelter, and medical attendance for his indigent parent or parents, unless, in the judgment of the court or jury, he is excused therefrom by reason of intemperance, indolence, immorality, or profligacy of such parent.

History: En. Sec. 1, Ch. 42, L. 1915; re-en. Sec. 5853, R.C.M. 1921; re-en. Sec. 5853, R.C.M. 1935; R.C.M. 1947, 61-124.

40-6-302. Failure to support — misdemeanor. Any person violating the provisions of 40-6-301 shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 42, L. 1915; re-en. Sec. 5854, R.C.M. 1921; re-en. Sec. 5854, R.C.M. 1935; R.C.M. 1947, 61-125.

40-6-303. Civil action to enforce duty to support. A civil suit may be instituted and maintained for the enforcement of the provisions of 40-6-301 by any such child, where there is more than one adult child, or by the parent to whom such support is due or by the county attorney, and in case there is more than one such child, the court or the jury upon the hearing is authorized and empowered to apportion the expenses of such support between the adult children, and the court shall enter judgment in accordance with such finding and apportionment; provided, that such civil action shall not be construed as barring the arrest and conviction of such person for misdemeanor.

History: En. Sec. 3, Ch. 42, L. 1915; re-en. Sec. 5855, R.C.M. 1921; re-en. Sec. 5855, R.C.M. 1935; R.C.M. 1947, 61-126.

CHAPTER 7

UNIFORM CHILD CUSTODY JURISDICTION ACT

Part 1 — Uniform Child Custody Jurisdiction Act

Section

40-7-101. Short title.
40-7-102. Purpose — construction.
40-7-103. Definitions.
40-7-104. Jurisdiction.
40-7-105. Notice and opportunity to be heard.
40-7-106. Notice to persons outside this state — submission to jurisdiction.
40-7-107. Simultaneous proceedings in other states.
40-7-108. Inconvenient forum.
40-7-109. Jurisdiction declined by reason of conduct.
40-7-110. Information under oath to be submitted to the court.
40-7-111. Additional parties.
40-7-112. Appearance of parties and child.
40-7-113. Legal effect of custody decree.
40-7-114. Recognition of out-of-state custody decrees.
40-7-115. Modification of custody decree of another state.
40-7-116. Filing and enforcement of custody decree of another state.
40-7-117. Registry of out-of-state custody decrees and proceedings.
40-7-118. Certified copies of custody decree.
40-7-119. Taking testimony in another state.
40-7-120. Hearings and studies in another state — orders to appear.
40-7-121. Assistance to courts of other states.
40-7-122. Preservation of documents for use in other states.
40-7-123. Request for court records of another state.
40-7-124. International application.
40-7-125. Priority.

Part 1

Uniform Child Custody Jurisdiction Act

40-7-101. Short title. This chapter may be cited as the "Uniform Child Custody Jurisdiction Act".

History: En. 61-401 by Sec. 1, Ch. 537, L. 1977; R.C.M. 1947, 61-401.

40-7-102. Purpose — construction. (1) The general purposes of this chapter are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jursidiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This chapter shall be construed to promote the general purposes stated in this section.

History: En. 61-402 by Sec. 2, Ch. 537, L. 1977; R.C.M. 1947, 61-402.

40-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 41, chapter 3 or 5.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

History: En. 61-403 by Sec. 3, Ch. 537, L. 1977; R.C.M. 1947, 61-403.

40-7-104. Jurisdiction. The jurisdictional provisions of 40-4-211 apply to this chapter.

History: En. 61-404 by Sec. 4, Ch. 537, L. 1977; R.C.M. 1947, 61-404.

40-7-105. Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 40-7-106.

History: En. 61-405 by Sec. 5, Ch. 537, L. 1977; R.C.M. 1947, 61-405.

40-7-106. Notice to persons outside this state — submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History: **En. 61-406 by Sec. 6, Ch. 537, L. 1977; R.C.M. 1947, 61-406.**

40-7-107. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under 40-7-110 and shall consult the child custody registry established under 40-7-117 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 40-7-120 through 40-7-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

History: **En. 61-407 by Sec. 7, Ch. 537, L. 1977; R.C.M. 1947, 61-407.**

40-7-108. Inconvenient forum. (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 40-7-102.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

History: En. 61-408 by Sec. 8, Ch. 537, L. 1977; R.C.M. 1947, 61-408.

40-7-109. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed

the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

History: **En. 61-409 by Sec. 9, Ch. 537, L. 1977; R.C.M. 1947, 61-409.**

40-7-110. Information under oath to be submitted to the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History: **En. 61-410 by Sec. 10, Ch. 537, L. 1977; R.C.M. 1947, 61-410.**

40-7-111. Additional parties. If the court learns from information furnished by the parties pursuant to 40-7-110 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with 40-7-106.

History: **En. 61-411 by Sec. 11, Ch. 537, L. 1977; R.C.M. 1947, 61-411.**

40-7-112. Appearance of parties and child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the

notice given under 40-7-106 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

History: **En. 61-412 by Sec. 12, Ch. 537, L. 1977; R.C.M. 1947, 61-412.**

40-7-113. Legal effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under 40-7-104 binds all parties who have been served in this state or notified in accordance with 40-7-106 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

History: **En. 61-413 by Sec. 13, Ch. 537, L. 1977; R.C.M. 1947, 61-413.**

40-7-114. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

History: **En. 61-414 by Sec. 14, Ch. 537, L. 1977; R.C.M. 1947, 61-414.**

40-7-115. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and 40-7-109 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with 40-7-123.

History: **En. 61-415 by Sec. 15, Ch. 537, L. 1977; R.C.M. 1947, 61-415.**

40-7-116. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

History: **En. 61-416 by Sec. 16, Ch. 537, L. 1977; R.C.M. 1947, 61-416.**

40-7-117. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History: **En. 61-417 by Sec. 17, Ch. 537, L. 1977; R.C.M. 1947, 61-417.**

40-7-118. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

History: **En. 61-418 by Sec. 18, Ch. 537, L. 1977; R.C.M. 1947, 61-418.**

40-7-119. Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

History: **En. 61-419 by Sec. 19, Ch. 537, L. 1977; R.C.M. 1947, 61-419.**

40-7-120. Hearings and studies in another state — orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and

other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

History: **En. 61-420 by Sec. 20, Ch. 537, L. 1977; R.C.M. 1947, 61-420.**

40-7-121. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

History: **En. 61-421 by Sec. 21, Ch. 537, L. 1977; R.C.M. 1947, 61-421.**

40-7-122. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

History: **En. 61-422 by Sec. 22, Ch. 537, L. 1977; R.C.M. 1947, 61-422.**

40-7-123. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in 40-7-122.

History: **En. 61-423 by Sec. 23, Ch. 537, L. 1977; R.C.M. 1947, 61-423.**

40-7-124. International application. The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

History: **En. 61-424 by Sec. 24, Ch. 537, L. 1977; R.C.M. 1947, 61-424.**

40-7-125. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this chapter shall be given calendar priority and handled expeditiously.

History: **En. 61-425 by Sec. 25, Ch. 537, L. 1977; R.C.M. 1947, 61-425.**

CHAPTER 8

ADOPTION

Part 1 — Adoption of Children

Section
40-8-101. Short title.
40-8-102. Uniformity of interpretation.
40-8-103. Definitions.
40-8-104. Who may be adopted.
40-8-105. Minor parent.
40-8-106. Who may adopt.
40-8-107. Venue.
Sections 40-8-108 through 40-8-110 reserved.
40-8-111. Consent required for adoption.
40-8-112. Withdrawal of consent.
40-8-113. Consent of child.
Sections 40-8-114 through 40-8-120 reserved.
40-8-121. Petition for adoption.
40-8-122. Investigation.
40-8-123. Summary decree.
40-8-124. Interlocutory and final decree.
40-8-125. Effect of final decree.
40-8-126. Confidentiality of record and proceedings.
40-8-127. Appeal.
40-8-128. Foreign adoption decrees.

Part 2 — Adoption of Adults

40-8-201. Adoption of adult.
40-8-202. Procedure.

Part 1

Adoption of Children

40-8-101. Short title. This part may be cited as the "Uniform Adoption Act".

History: **En. Sec. 17, Ch. 240, L. 1957; R.C.M. 1947, 61-217.**

40-8-102. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: **En. Sec. 16, Ch. 240, L. 1957; R.C.M. 1947, 61-216.**

40-8-103. Definitions. As used in this part, unless the context otherwise requires, "child" means any minor person and "agency" means any person, authority, or agency legally empowered to place children for adoption. Singular words may extend and be applied to several persons or things, as well as to one person or thing. Plural words may extend and be applied to one person or thing, as well as to several persons or things.

History: **En. Sec. 1, Ch. 240, L. 1957; R.C.M. 1947, 61-201.**

40-8-104. Who may be adopted. Any child present within this state at the time the petition for adoption is filed, irrespective of place of birth or place of residence, may be adopted.

History: En. Sec. 2, Ch. 240, L. 1957; R.C.M. 1947, 61-202.

40-8-105. Minor parent. A parent who is a minor shall have the right to relinquish his or her child for adoption, and such relinquishment shall not be subject to revocation by reason of such minority.

History: En. 61-218 by Sec. 6, Ch. 199, L. 1961; R.C.M. 1947, 61-218.

40-8-106. Who may adopt. The following persons are eligible to adopt a child:

(1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the child;

(2) an unmarried person who is at least 18 years old;

(3) a married person at least 18 years old who is legally separated from the other spouse;

(4) in the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957; amd. Sec. 15, Ch. 240, L. 1971; amd. Sec. 22, Ch. 94, L. 1973; R.C.M. 1947, 61-203.

40-8-107. Venue. Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

History: En. Sec. 4, Ch. 240, L. 1957; R.C.M. 1947, 61-204.

40-8-108 through 40-8-110 reserved.

40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of physical cruelty toward the child;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child;

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of social and rehabilitation services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of social and rehabilitation services or of an agency or witnessed by a representative of the court.

History: En. Sec. 5, Ch. 240, L. 1957; amd. Sec. 2, Ch. 199, L. 1961; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 27, Ch. 512, L. 1975; R.C.M. 1947, 61-205; amd. Sec. 6, Ch. 33, L. 1979.

40-8-112. Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

History: En. Sec. 6, Ch. 240, L. 1957; R.C.M. 1947, 61-206.

40-8-113. Consent of child. Consent of the child if 12 years of age or over shall be required. Such consent shall be given in court or be in writing in such form as the court shall direct.

History: En. Sec. 7, Ch. 240, L. 1957; R.C.M. 1947, 61-207.

40-8-114 through 40-8-120 reserved.

40-8-121. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of social and rehabilitation services. An additional copy shall be sent to any agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

History: En. Sec. 8, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 18, Ch. 33, L. 1977; R.C.M. 1947, 61-208.

40-8-122. Investigation. (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department of social and rehabilitation services or any other private agency licensed and approved for such investigatory purpose by the department of social and rehabilitation services, unless such investigation is waived by the department of social and rehabilitation services, and shall in its discretion further order that a report of such investigation shall be filed with the court by the designated investigator within the time fixed by the court and in no event more than 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. Such investigation if ordered by the court shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption, appropriate inquiry to determine whether the proposed home is a suitable one for the child, and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of such investigation shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and state reasons therefor.

History: En. Sec. 9, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 2, Ch. 495, L. 1975; R.C.M. 1947, 61-209.

40-8-123. Summary decree. If the child is related by blood to one of the petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered thereby, the court, after examination of the report specified in 40-8-122, if such report had been ordered by said court, in its discretion, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and grant a final decree of adoption if satisfied that the adoption is for the best interests of the child.

History: En. Sec. 10, Ch. 240, L. 1957; amd. Sec. 3, Ch. 199, L. 1961; R.C.M. 1947, 61-210.

40-8-124. Interlocutory and final decree. (1) Upon examination of the report described in 40-8-122, if such report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing such parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the petition and the order of the court thereon shall be binding upon all persons so served; provided that any such person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process shall not be made on any parent who has relinquished his child to the department of social and rehabilitation services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within 6 months on any circumstances or conditions which may have a bearing on the adoption. After 6 months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the department of social and rehabilitation services and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of the child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 19, Ch. 33, L. 1977; R.C.M. 1947, 61-211.

40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents and the kindred of the adoptive parents in accordance with the statutes of descent and distribution and the adoptive parents and their kindred shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.

History: **En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965; R.C.M. 1947, 61-212.**

40-8-126. Confidentiality of record and proceedings. (1) Unless the court shall otherwise order, all hearings held in proceedings under this part shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except for good cause shown, on order of the judge of the court in which the decree of adoption was entered.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown.

History: **En. Sec. 13, Ch. 240, L. 1957; amd. Sec. 18, Ch. 121, L. 1974; R.C.M. 1947, 61-213.**

40-8-127. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder in the district court by any person aggrieved thereby, in the manner provided for appeals from the court in other civil matters.

History: **En. Sec. 14, Ch. 240, L. 1957; amd. Sec. 20, Ch. 33, L. 1977; R.C.M. 1947, 61-214.**

40-8-128. Foreign adoption decrees. When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by 40-8-125.

History: **En. Sec. 15, Ch. 240, L. 1957; R.C.M. 1947, 61-215.**

Part 2

Adoption of Adults

40-8-201. Adoption of adult. A person who is an adult and has attained the age of legal majority may be adopted without the consent of his parents.

History: **En. Sec. 1, Ch. 229, L. 1947; R.C.M. 1947, 61-139.**

40-8-202. Procedure. Except as otherwise inconsistent with this part, the procedure and law for adoption of minors set forth in 40-8-106, 40-8-107, 40-8-121, 40-8-123, 40-8-124, and 40-8-125 shall be applicable in proceedings for the adoption of an adult under the provisions of this part, provided that provisions concerning an interlocutory decree shall not be applicable in the case of the adoption of an adult.

History: **En. Sec. 2, Ch. 229, L. 1947; amd. Sec. 5, Ch. 199, L. 1961; R.C.M. 1947, 61-140.**

CHAPTER 9

GRANDPARENT VISITATION

Part 1 — General Provisions

Section
40-9-101. Application of Montana Rules of Civil Procedure.
40-9-102. Grandparent visitation rights.

Part 1

General Provisions

40-9-101. Application of Montana Rules of Civil Procedure. (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

(2) A proceeding for grandparent visitation under this section and 40-9-102 shall be entitled, "In re the visitation of ......"

(3) The initial pleading in all proceedings under this section and 40-9-102 shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings shall be denominated as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 1, Ch. 17, L. 1979.

40-9-102. Grandparent visitation rights. (1) If the father or mother of an unmarried child is deceased, the district court may grant to the parents of the deceased person reasonable visitation rights with the child.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent.

History: En. Sec. 2, Ch. 17, L. 1979.

TITLE 41

MINORS

Ch.
1. Rights and Obligations of Minors.
2. Child Labor.
3. Child Abuse, Neglect, and Dependency.
4. Interstate Placement of Children.
5. Youth Court Act.
6. Interstate Compact on Juveniles.

CHAPTER 1

RIGHTS AND OBLIGATIONS OF MINORS

Part 1 — Minority

Section
41-1-101. Minors and adults defined.
41-1-102. Periods of minority — how calculated.
41-1-103. Unborn children.

Part 2 — Civil Actions Concerning Minors

41-1-201. Liability of minors for wrongs — exemplary damages.
41-1-202. Enforcement of minor's rights.

Part 3 — Power to Contract

41-1-301. Delegation of power by minors forbidden.
41-1-302. Contracts of minors — disaffirmance.
41-1-303. Capacity of minors to borrow money for education.
41-1-304. When minors may disaffirm.
41-1-305. Minor cannot disaffirm contract for necessaries.
41-1-306. Minor cannot disaffirm certain obligations.

Part 4 — Validity of Consent to Medical Treatment

41-1-401. Health professional defined.
41-1-402. Validity of consent of minor for health services.
41-1-403. Release of information by physician.
41-1-404. Financial responsibility of minor.
41-1-405. Emergencies and special situations.
41-1-406. Psychiatric or psychological counseling under urgent circumstances.
41-1-407. Immunity and responsibility of psychologist, physician, or health care facility.

Part 1

Minority

41-1-101. Minors and adults defined. (1) Minors are:

(a) males under 18 years of age;

(b) females under 18 years of age.

(2) All other persons are adults.

History: En. Secs. 10, 12, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R.C.M. 1921; Cal. Civ. C. Sec. 25; Field Civ. C. Sec. 11; re-en. Sec. 5673, R.C.M. 1935; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973; R.C.M. 1947, 64-101.

41-1-102. Periods of minority — how calculated. The periods specified in 41-1-101 must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R.C.M. 1921; Cal. Civ. C. Sec. 26; re-en. Sec. 5674, R.C.M. 1935; R.C.M. 1947, 64-102.

41-1-103. Unborn children. A child conceived but not yet born is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R.C.M. 1921; Cal. Civ. C. Sec. 29; Field Civ. C. Sec. 12; re-en. Sec. 5675, R.C.M. 1935; R.C.M. 1947, 64-103.

Part 2

Civil Actions Concerning Minors

41-1-201. Liability of minors for wrongs — exemplary damages. A minor is civilly liable for a wrong done by him but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113(part).

41-1-202. Enforcement of minor's rights. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114.

Part 3

Power to Contract

41-1-301. Delegation of power by minors forbidden. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R.C.M. 1921; Cal. Civ. C. Sec. 33; Field Civ. C. Sec. 15; re-en. Sec. 5678, R.C.M. 1935; R.C.M. 1947, 64-105.

41-1-302. Contracts of minors — disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1.

History: En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R.C.M. 1921; Cal. Civ. C. Sec. 34; Field Civ. C. Sec. 16; re-en. Sec. 5679, R.C.M. 1935; R.C.M. 1947, 64-106.

41-1-303. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school shall have full legal capacity to act in his own behalf and shall have all the rights, powers, and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963; R.C.M. 1947, 64-106.1.

41-1-304. When minors may disaffirm. In all cases other than those specified by 41-1-303, 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

History: En. Sec. 18, Civ. C. 1895; re-en. Sec. 3592, Rev. C. 1907; re-en. Sec. 5680, R.C.M. 1921; Cal. Civ. C. Sec. 35; Field Civ. C. Sec. 17; re-en. Sec. 5680, R.C.M. 1935; R.C.M. 1947, 64-107; amd. Sec. 1, Ch. 29, L. 1979.

41-1-305. Minor cannot disaffirm contract for necessaries. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part).

41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

History: En. Sec. 20, Civ. C. 1895; re-en. Sec. 3594, Rev. C. 1907; re-en. Sec. 5682, R.C.M. 1921; Cal. Civ. C. Sec. 37; Field Civ. C. Sec. 19; re-en. Sec. 5682, R.C.M. 1935; R.C.M. 1947, 64-109.

Part 4

Validity of Consent to Medical Treatment

41-1-401. Health professional defined. Health professional as used in this part shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists, or dentists.

History: En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974; R.C.M. 1947, 69-6105.1.

41-1-402. Validity of consent of minor for health services. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including venereal disease, or drug and

HAROLD H. HARRISON
ATTORNEY AT LAW

substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, venereal disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian shall be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

History: En. Sec. 1, Ch. 189, L. 1969; amd. Sec. 1, Ch. 312, L. 1974; amd. Sec. 23, Ch. 100, L. 1977; R.C.M. 1947, 69-6101.

41-1-403. Release of information by physician. (1) A treating physician or other health professional may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor in the circumstances as enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. When the minor is found not to be pregnant or not afflicted with venereal disease or not suffering from a drug- or substance-abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this part, without the consent of the minor.

History: En. Sec. 2, Ch. 189, L. 1969; amd. Sec. 2, Ch. 312, L. 1974; R.C.M. 1947, 69-6102.

41-1-404. Financial responsibility of minor. Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. Minors so consenting for such health services shall thereby assume financial responsibility for the cost of said services, except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered.

History: **En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974; R.C.M. 1947, 69-6103.**

41-1-405. Emergencies and special situations. (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians, if a physician determines the health service should be given.

(4) Self-consent of minors shall not apply to sterilization or abortion.

History: **En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974; R.C.M. 1947, 69-6104.**

41-1-406. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for such counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of other person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, shall be as valid and binding as if the minor had achieved majority. That is, such minor has the same legal capacity to act and the same legal obligations with regard to the giving of such consent as a person of full legal age and capacity, and such consent may not be subject to later disaffirmance by reason of such minority. The consent of no other person or persons (including but not limited to a spouse, parent, custodian, or guardian) is necessary in order to authorize the psychiatric or psychological counseling of such minor. However, no parent may be obligated for the cost of such counseling without his consent.

History: **En. Sec. 1, Ch. 315, L. 1971; amd. Sec. 24, Ch. 100, L. 1977; R.C.M. 1947, 69-6106.**

41-1-407. Immunity and responsibility of psychologist, physician, or health care facility. (1) No physician, surgeon, dentist, or health or mental health care facility may be compelled against their best judgment to treat a minor on his own consent.

(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling

services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: (1), (2)En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974; Sec. 69-6105, R.C.M. 1947; (3)En. Sec. 2, Ch. 315, L. 1971; Sec. 69-6107, R.C.M. 1947; R.C.M. 1947, 69-6105, 69-6107.

CHAPTER 2

CHILD LABOR

Part 1 — Prohibited Employment of Children

Section
41-2-101. Employment of children prohibited — when.
Sections 41-2-102 through 41-2-110 reserved.
41-2-111. Liability of parent.
41-2-112. Record of children under the age of sixteen years.
41-2-113. Age certificates.
41-2-114. Enforcement.
Sections 41-2-115 through 41-2-120 reserved.
41-2-121. Penalties.

Part 1

Prohibited Employment of Children

41-2-101. Employment of children prohibited — when. Any person, company, firm, association, or corporation engaged in business in this state or any agent, officer, foreman, or other employee having control or management of employees or having the power to hire or discharge employees who shall knowingly employ or permit to be employed any child under the age of 16 years to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine; mill; smelter; workshop; factory; steam, electric, hydraulic, or compressed-air railroad; or passenger or freight elevator or where any machinery is operated or for any telegraph, telephone, or messenger company or in any occupation not herein enumerated which is known to be dangerous or unhealthful or which may be in any way detrimental to the morals of said child shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746, Rev. C. 1907; re-en. Sec. 3095, R.C.M. 1921; re-en. Sec. 3095, R.C.M. 1935; R.C.M. 1947, 10-201.

41-2-102 through 41-2-110 reserved.

41-2-111. Liability of parent. Any parent, guardian, or other person having the care, custody, or control of any child under the age of 16 years who shall permit, suffer, or allow any such child to work or perform service for any person, company, firm, association, or corporation doing business in this state or who shall permit or allow any such child over whom he has such care, custody, or control to retain such employment as is prohibited in

41-2-101, whether under contract of employment or not, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: **En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907; re-en. Sec. 3096, R.C.M. 1921; re-en. Sec. 3096, R.C.M. 1935; R.C.M. 1947, 10-202.**

41-2-112. Record of children under the age of sixteen years. The commissioner of labor and industry shall compile and preserve in his office from reports made to him by the county superintendents of schools, as otherwise provided, a full and complete list of the name, age, date of birth, and sex of each child and the names of the parents or guardians of each child under the age of 16 years who is now or may hereafter become a resident of this state, and such list shall be the official record of the age of children in this state.

History: **En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907; re-en. Sec. 3097, R.C.M. 1921; re-en. Sec. 3097, R.C.M. 1935; R.C.M. 1947, 10-203.**

41-2-113. Age certificates. Upon obtaining the age of 16 years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom the child seeks employment. The employer, if such employment be given, must countersign the certificate and return it to the commissioner, who shall keep it on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by 41-2-101 any child without such certificate showing the child to be at least 16 years of age is guilty of a misdemeanor and punishable as hereinafter provided should such child prove to be less than 16 years of age.

History: **En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R.C.M. 1921; re-en. Sec. 3098, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1977; R.C.M. 1947, 10-204.**

41-2-114. Enforcement. To enforce this part the commissioner of labor and industry and each county attorney shall, each upon his own volition or upon the sworn complaint of any reputable citizen that this part is being violated, make prosecutions for such violations.

History: **En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R.C.M. 1921; re-en. Sec. 3099, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1977; R.C.M. 1947, 10-205.**

41-2-115 through 41-2-120 reserved.

41-2-121. Penalties. Every person, firm, company, association, or corporation who violates any of the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $500 or by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: **En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907; re-en. Sec. 3100, R.C.M. 1921; re-en. Sec. 3100, R.C.M. 1935; R.C.M. 1947, 10-206.**

CHAPTER 3

CHILD ABUSE, NEGLECT, AND DEPENDENCY

Part 1 — General

Section
41-3-101. Declaration of policy.
41-3-102. Definitions.

41-3-103. Jurisdiction and venue.
41-3-104. Payment for support of youth in need of care — reimbursement by county.
41-3-105. Recovery from parents or guardianship assets — division between state and county.
41-3-106. Prosecution of offenders.
41-3-107. Interagency cooperation.
41-3-108. Child protective teams.

Part 2 — Reports and Investigations

41-3-201. Reports.
41-3-202. Action on reporting.
41-3-203. Immunity from liability.
41-3-204. Admissibility and preservation of evidence.
41-3-205. Confidentiality.
41-3-206. Procedure in case of child's death.
41-3-207. Penalty for failure to report.
41-3-208. Rulemaking authority.

Part 3 — Protective Care

41-3-301. Emergency protective service.
41-3-302. Responsibility of providing protective services.
41-3-303. Guardian ad litem.

Part 4 — Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse, neglect, and dependency petitions.
41-3-402. Petition for temporary investigative authority and protective services.
41-3-403. Order for immediate protection of youth.
41-3-404. Adjudicatory hearing — temporary disposition.
41-3-405. Investigation of parents' or guardian's financial ability.
41-3-406. Dispositional hearing.
41-3-407. Order for financial support.

Part 5 — Foster Homes and Other Private Institutions

41-3-501. Definitions.
41-3-502. License required.
41-3-503. Issuance of license — authority of issuing agency.
41-3-504. Penalty.

Part 1

General

41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana to:

(a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may be adversely affected and further

threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever appropriate.

History: (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300, 10-1303; amd. Sec. 1, Ch. 543, L. 1979.

Compiler's Comments

Preamble. The Preamble to SB 301 (Ch. 543, L. 1979) provided: "WHEREAS, Governor Judge appointed a task force to recommend ways in which services to families in which abuse and neglect are occurring could be improved; and

WHEREAS, the task force recognizes that the most crucial actions toward improving services to families must be taken by the local community; and

WHEREAS, the task force recognizes that child abuse and neglect is a multifaceted problem and that no one agency or discipline, by itself, has the resources or perspective to resolve or contain the problem; and

WHEREAS, the task force has heard testimony from numerous individuals, legislative staff, and other persons who deal with abused and neglected children and their families; and

WHEREAS, existing child abuse and neglect laws do not meet requirements allowing Montana to qualify for federal grants under Public Law 93-247.

THEREFORE, it is the intent of this bill to address the problems facing the children, families, and communities of this state regarding child abuse and neglect.

Saving clause. Sec. 16, Ch. 543, L. 1979, provided: "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act." Effective July 1, 1979.

41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future.

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.

(5) "Threatened harm" means imminent risk of harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential

institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979.

41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the youth court shall have concurrent jurisdiction with the district court over:

(a) all youths who are within the state of Montana for any purpose;

(b) any youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court; or

(c) any person who is alleged to have abused, neglected, or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to 41-5-204.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302.

41-3-104. Payment for support of youth in need of care — reimbursement by county. (1) Whenever agreements are entered into by the department of social and rehabilitation services for placing a youth in need of care in a licensed family foster home, child care agency, group home, or private treatment facility, the department shall pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, and room of such children.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the department within 20 days after such claim is presented.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R.C.M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974; amd. Sec. 22, Ch. 100, L. 1977; R.C.M. 1947, 10-1320; amd. Sec. 3, Ch. 543, L. 1979.

41-3-105. Recovery from parents or guardianship assets — division between state and county. (1) In the event any recovery is made from the parent or parents or guardianship assets of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from the parents or guardianship assets when a child is placed in a foster home, child care agency, group home, or private treatment facility shall be transmitted to the department of social and rehabilitation services. The department shall then pay to the county one-half of the amount so collected.

History: **(1)En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971; Sec. 10-525, R.C.M. 1947; redes. 10-1321 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1321, R.C.M. 1947; (2)En. 10-1313 by Sec. 9, Ch. 328, L. 1974; Sec. 10-1313, R.C.M. 1947; R.C.M. 1947, 10-1313(part), 10-1321; amd. Sec. 2, Ch. 567, L. 1979.**

41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

History: **En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322.**

41-3-107. Interagency cooperation. To effectuate the purposes of this chapter, the county welfare department shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. Such cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

History: **En. Sec. 4, Ch. 543, L. 1979.**

Compiler's Comments

Codification. Sec. 17, Ch. 543, L. 1979, provided in part: "It is intended that sections 5 and 6 of this act be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, apply to sections 5 and 6 of this act." The bill enacting Chapter 543 was amended so that sections 5 and 6 became sections 4 and 5, but these references were overlooked.

41-3-108. Child protective teams. The county attorney or the county welfare department may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and his family. The supervisor of child protective services of the county welfare department or his designee shall serve as the team's coordinator. Members shall include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney.

History: **En. Sec. 5, Ch. 543, L. 1979.**

Compiler's Comments

Codification. Sec. 17, Ch. 543, L. 1979, provided in part: "It is intended that sections 5 and 6 of this act be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, apply to sections 5 and 6 of this act." The bill enacting Chapter 543 was amended so that sections 5 and 6 became sections 4 and 5, but these references were overlooked.

Part 2

Reports and Investigations

41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, licensed day-care center, or any other licensed child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch. 543, L. 1979.

41-3-202. Action on reporting. (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency shall be responsible for ensuring that the report is made to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county in which the facility is located.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979.

41-3-203. Immunity from liability. Anyone investigating or reporting any incident of child abuse or neglect, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979.

41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding where the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the county child protective service agency.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his

professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local child protective services agency at the time the written confirmation report is sent or as soon thereafter as is possible.

History: En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979.

41-3-205. Confidentiality. (1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protective teams as authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979.

41-3-206. Procedure in case of child's death. (1) Any person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report his suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to HB 813 (Ch. 567, L. 1979) provided: "The provision of law dealing with abused, neglected, or dependent children; delinquent youths; and youths in need of supervision recognize the principle that the parents or guardian of the minor is responsible for a fair share of the costs of supporting the minor when the minor is placed in a foster home, group home, or other form of custodial care. This bill is intended to provide a mechanism for determining the parents' or guardians' share of financial support in those situations involving the department of social and rehabilitation services. Three guiding principles interact to provide the thrust of the legislation. First, the welfare of the minor is of utmost concern. The focus is on the youth, and the law is designed to provide an opportunity for the youth to realize his potential. Secondly, the traditional privacy and security of the family are to be preserved. Thirdly and referred to above, the parents or guardian of a minor is responsible for the financial support of the minor. These three principles can and often do conflict with one another. This bill addresses investigations as to the ability of the parents or guardian to bear all or part of the cost of supporting a youth taken from their custody and attempts to strike a balance between these three principles by requiring that an investigation by the county welfare department into matters of financial status may not be made until a court, or, in the case of an informal adjustment under the Youth Court Act, a probation officer places the child in a foster home, child care agency, group home, or private treatment facility.

Rules developed pursuant to authority granted under this bill should provide procedures that insure the parents or guardian have access to the reports and data developed by both the department of social and rehabilitation services and the county welfare department and that guarantee investigations into financial and other matters will not intrude into private lives beyond the level necessary to protect the welfare of the child."

Codification. Sec. 17, Ch. 543, L. 1979, provided in part: "It is intended that section 8 of this act be codified as an integral part of Title 41, chapter 3, part 2, and the provisions of Title 41, chapter 3, apply to section 8 of this act." The bill enacting Chapter 543 was amended so that section 8 became section 7, but these references were overlooked.

41-3-207. Penalty for failure to report. Any person, official, or institution required by law to report known or suspected child abuse or neglect or required to perform any other act who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

History: En. Sec. 15, Ch. 543, L. 1979.

Compiler's Comments

Codification. Sec. 17, Ch. 543, L. 1979, provided in part: "It is intended that sections 15 and 16 of this act be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, apply to sections 15 and 16 of this act." The bill enacting Chapter 543 was amended so that sections 15 and 16 became sections 14 and 15, but these references were overlooked. The Code Commissioner determined that section 15 was more appropriately codified in part 2. Such placement has no effect on the meaning of the law.

41-3-208. Rulemaking authority. The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations authorized by this chapter or 41-5-805.

History: En. Sec. 1, Ch. 567, L. 1979.

Part 3

Protective Care

41-3-301. Emergency protective service. (1) Any child protective social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

History: En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979.

41-3-302. Responsibility of providing protective services. (1) The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary, limited, or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The county welfare department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

History: En. 10-1315 by Sec. 11, Ch. 328, L. 1974; R.C.M. 1947, 10-1315; amd. Sec. 13, Ch. 543, L. 1979.

41-3-303. Guardian ad litem. In every judicial proceeding the court shall appoint for any child alleged to be abused or neglected a guardian ad litem who, whenever possible, shall be an attorney. When necessary the guardian ad litem may serve at public expense.

History: En. Sec. 14, Ch. 543, L. 1979.

Compiler's Comments

Codification. Sec. 17, Ch. 543, L. 1979, provided in part: "It is intended that sections 15 and 16 of this act be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, apply to sections 15 and 16 of this act." The bill enacting Chapter 543 was amended so that sections 15 and 16 became sections 14 and 15, but these references were overlooked.

Part 4

Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out

of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) limited legal custody;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services.

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979.

41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney or a

department of social and rehabilitation services report stating in detail the facts upon which the request is based.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3).

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the department of social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to comply immediately with the terms thereof or, upon failure to so comply, to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the department of social and rehabilitation services until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of social and rehabilitation services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

(f) such other temporary disposition as may be required in the best interest of the youth.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5).

41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401 or 41-3-402, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing and order any necessary or required investigations. The dispositional hearing shall be scheduled as soon as practicable. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

History: En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979.

41-3-405. Investigation of parents' or guardian's financial ability. (1) Whenever a court determines a youth to be an abused, neglected, or dependent child pursuant to 41-3-404, the court shall issue an order directing the county welfare department of the county in which the petition was filed to conduct an investigation of the financial status of the child's parents or the extent of guardianship assets.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the child and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the child in a foster home, child care agency, group home, or private treatment facility. A written report of the investigation shall be filed with the clerk of court before the time fixed for the dispositional hearing.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time set for the dispositional hearing.

History: En. 10-1313 by Sec. 9, Ch. 328, L. 1974; R.C.M. 1947, 10-1313(part); amd. Sec. 6, Ch. 567, L. 1979.

41-3-406. Dispositional hearing. (1) If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution, or department, it shall transmit with the dispositional judgment copies of any medical report and such other clinical, predisposition, or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected, or dependent may be committed to the Montana children's center, and if the center is unable to receive the child or if for any other reason it appears to be in the best interest of the child, the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of ......)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., minor of this county, was charged on the petition of ...., county attorney of .... County, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
....	....	....
....	....	....

The child's guardian is ....
The child is in the custody of ....

It is ordered that .... be committed to .... until discharged as provided by law.

Witness my hand this .... day of ...., A.D. 19...

....
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section.

History: En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979.

41-3-407. Order for financial support. (1) Whenever a youth is placed in a foster home, child care agency, group home, or private treatment facility under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. This question of financial ability shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available

from guardianship assets. Upon a showing of change in financial ability, the court may modify the order.

History: En. Sec. 8, Ch. 567, L. 1979.

Part 5

Foster Homes and Other Private Institutions

41-3-501. Definitions. (1) Any person owning or operating a home or institution into which home or institution he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, ward, nor related to him by blood, shall be deemed to be an "operator" of a "foster home or boarding home" within the meaning of this chapter, except that this chapter shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(2) The word "person" where used in this chapter shall include any individual, partnership, voluntary association, or corporation.

History: En. Sec. 1, Ch. 178, L. 1947; Sec. 10-520, R.C.M. 1947; redes. 10-1316 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1316.

41-3-502. License required. No person shall maintain or operate a foster or boarding home for any child or children within the meaning of this chapter without first securing a license in writing from the department of social and rehabilitation services. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317.

41-3-503. Issuance of license — authority of issuing agency. The department of social and rehabilitation services is hereby authorized to issue licenses to persons conducting boarding or foster homes and to prescribe the conditions upon which such licenses shall be issued and to make such rules as it may deem advisable for the operation and regulation of foster and boarding homes for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed foster and boarding homes through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules. The person operating such homes shall give to such representative such information as may be required and afford him every reasonable facility for observing the operation of such homes.

History: En. Sec. 3, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-522, R.C.M. 1947; redes. 10-1318 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1318.

41-3-504. Penalty. Any person who maintains or conducts a foster or boarding home or assists in conducting or maintaining such home without having first obtained a license in writing as hereto provided shall be guilty of a misdemeanor and upon conviction be punished by a fine not to exceed $100.

History: En. Sec. 4, Ch. 178, L. 1947; Sec, 10-523, R.C.M. 1947; redes. 10-1319 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1319.

CHAPTER 4

INTERSTATE PLACEMENT OF CHILDREN

Part 1 — Text of Compact

Section

41-4-101. Enactment — provisions.
41-4-102. Financial responsibility.
41-4-103. Appropriate public authorities defined.
41-4-104. Appropriate authority in the receiving state.
41-4-105. Agreements.
41-4-106. Requirements for visitation, inspection, and supervision.
41-4-107. Certain laws not applicable.
41-4-108. Court jurisdiction retained.
41-4-109. Executive head defined.

Part 1

Text of Compact

41-4-101. Enactment — provisions. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) "receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) "placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) the name, date, and place of birth of the child;

(b) the identity and address or addresses of the parents or legal guardian;

(c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or his transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

(1) the sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 10-1401 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1401.

41-4-102. Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforcement of Support Act) and 41-3-104, 41-3-404, and 41-3-405 also may be invoked.

History: En. 10-1402 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1402; amd. Sec. 18, Ch. 543, L. 1979.

41-4-103. Appropriate public authorities defined. The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the department of social and rehabilitation services, and said department shall receive and act with reference to notices required by said Article III.

History: En. 10-1403 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1403.

41-4-104. Appropriate authority in the receiving state. As used in Article V(1) of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the department of social and rehabilitation services.

History: En. 10-1404 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1404.

41-4-105. Agreements. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Article V(2) of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

History: En. 10-1405 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1405.

41-4-106. Requirements for visitation, inspection, and supervision. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under 41-3-502, 41-3-503, and 53-4-113 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by Article V(2) of the Interstate Compact on the Placement of Children.

History: En. 10-1406 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1406.

41-4-107. Certain laws not applicable. The provisions of 53-4-114 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

History: En. 10-1407 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1407.

41-4-108. Court jurisdiction retained. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

History: En. 10-1408 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1408.

41-4-109. Executive head defined. As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

History: En. 10-1409 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1409.

CHAPTER 5

YOUTH COURT ACT

Part 1 — General

Section

41-5-101. Short title.
41-5-102. Declaration of purpose.

41-5-103. Definitions.
41-5-104. County commissioners authorized to provide funds.
41-5-105. Youth court committee.
41-5-106. Order of adjudication — noncriminal.

Part 2 — Youth Court—Jurisdiction

41-5-201. Youth court judge.
41-5-202. Disqualification of judges.
41-5-203. Jurisdiction of the court.
41-5-204. Venue and transfer.
41-5-205. Retention of jurisdiction.
41-5-206. Transfer to criminal court.
41-5-207. Court costs and expenses.

Part 3 — Detention Procedure

41-5-301. Preliminary investigation and disposition.
41-5-302. Taking into custody.
41-5-303. Rights of youth upon apprehension.
41-5-304. Fingerprints and photographs.
41-5-305. Detention and shelter care of youth.
41-5-306. Place of shelter care or detention.
41-5-307. Release or delivery from custody.

Part 4 — Informal Proceeding

41-5-401. Consent adjustment without petition.
41-5-402. Communications privileged.
41-5-403. Disposition permitted under informal adjustment.

Part 5 — Proceeding on Petition

41-5-501. Petition — form and content.
41-5-502. Summons.
41-5-503. Service of summons.
Sections 41-5-504 through 41-5-510 reserved.
41-5-511. Right to counsel.
41-5-512. Appointment of guardian ad litem.
41-5-513. Right to confront witnesses.
41-5-514. Admissibility of confession or illegally seized evidence.
41-5-515. Persons to be advised of rights.
41-5-516. Time limitations on petition hearing — continuance.
Sections 41-5-517 through 41-5-520 reserved.
41-5-521. Adjudicatory hearing.
41-5-522. Dispositional hearing.
41-5-523. Disposition of delinquent youth and youth in need of supervision.
41-5-524. Consent decree with petition.
Sections 41-5-525 through 41-5-530 reserved.
41-5-531. Posttrial motions.
41-5-532. Appeals.
41-5-533. Probation revocation — disposition.

Part 6 — Confidentiality of Proceedings—Records

41-5-601. Publicity.
41-5-602. Law enforcement records.
41-5-603. Youth court records.
41-5-604. Disposition of records.

Part 7 — Probation Officers

41-5-701. Appointment of probation officers.

41-5-702. Qualifications of probation officers.
41-5-703. Powers and duties of probation officers.
41-5-704. Salary and expenses.
41-5-705. Deputy probation officers — salary.

Part 8 — Custodial Care

41-5-801. Shelter care and foster homes.
41-5-802. Shelter care and detention facilities.
41-5-803. Support of youth committed to a custodial agency.
41-5-804. Transfer of custody to private agency — reports.
41-5-805. Financial investigation by county welfare department.
41-5-806. Order for financial support.

Part 9 — District Youth Guidance Homes

41-5-901. Establishment of district youth guidance home program.
41-5-902. Rules.
41-5-903. Power of nonprofit corporations to establish homes — power to receive facilities and funds.
Sections 41-5-904 through 41-5-910 reserved.
41-5-911. Per diem charge to financially able parents.
41-5-912. Governmental aid to nonprofit organizations.
41-5-913. Federal assistance.
Sections 41-5-914 through 41-5-920 reserved.
41-5-921. Petition by person under twenty-one to be placed in district youth guidance home.
41-5-922. Placement of youths by department of institutions.
41-5-923. Authority of youth court judge to commit delinquent youths and youths in need of supervision.
41-5-924. Continuing jurisdiction of youth court over youths.

Part 1

General

41-5-101. Short title. This chapter may be cited as the "Montana Youth Court Act".

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

41-5-102. Declaration of purpose. The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care, rehabilitation, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979.

41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena, and Swan River youth forest camp.

(18) "Shelter care" means the temporary care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities.

(20) "District youth guidance home" means a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state youth correctional facilities, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision.

(21) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding.

History: Ap. p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap. p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979.

41-5-104. County commissioners authorized to provide funds. The county commissioners of all counties are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this chapter.

History: En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239.

41-5-105. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives, which committee shall be designated as a youth court committee. This committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240.

41-5-106. Order of adjudication — noncriminal. No commitment of any youth to any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

History: En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235.

Part 2

Youth Court — Jurisdiction

41-5-201. Youth court judge. (1) Each judicial district in the state shall have at least one judge of the youth court. His duties shall be to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

History: En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part).

41-5-202. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this chapter.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223.

41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage violations alleged to have been committed by a youth.

History: En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979.

41-5-204. Venue and transfer. (1) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law;

(c) the county of residence of the youth's parents or guardian.

(2) A change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

(3) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207.

41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time of commitment of the youth to the custody of the department of institutions;

(3) in any event, at the time the youth reaches the age of 21 years.

History: En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208.

41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) criminal homicide as defined in 45-5-101;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) sexual intercourse without consent as defined in 45-5-503;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal sale of dangerous drugs for profit as included in 45-9-101;

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229.

41-5-207. Court costs and expenses. The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226.

Part 3

Detention Procedure

41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department of social and rehabilitation services.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken;

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in detention must be filed within 5 working days from the date the youth was first detained or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

History: En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209.

41-5-302. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department of social and rehabilitation services, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211.

41-5-303. Rights of youth upon apprehension. When a youth is detained for investigation or questioning upon a matter which could result in a petition alleging that the youth being detained is either delinquent or in need of supervision, the following requirements must be met:

(1) The youth shall be immediately and effectively advised of his constitutional rights and his rights under this chapter.

(2) The youth may waive such rights under the following situations:

(a) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(b) when the youth is over the age of 12 years and the youth and his parents agree, they may make an effective waiver; and

(c) when the youth is over the age of 12 years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979.

41-5-304. Fingerprints and photographs. (1) Title 46 shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) no youth may be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge;

(b) no fingerprint records or photographs may be filed with the federal bureau of investigation, the Montana department of justice, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(2) At such time as the proceedings in the matter, including appeals, are complete, the fingerprint records and photographs shall be destroyed. However, such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

History: **En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2).**

41-5-305. Detention and shelter care of youth. (1) A youth taken into custody may not be detained prior to the hearing on the petition except when:

(a) his detention is required to protect the person or the property of others or of the youth;

(b) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(c) there are not adequate assurances that the youth will appear for court when required; or

(d) an order for his detention has been made by the court.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: **En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212.**

41-5-306. Place of shelter care or detention. (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

(a) a licensed foster home or a home approved by the court for the provision of shelter care of youth;

(b) a facility operated by a licensed child welfare agency;

(c) a licensed attention home or shelter facility which is operated by a nonprofit corporation or the youth court for the provision of shelter care of youth;

(d) any other suitable place or facility designated or operated by the court for the supervision of youth in shelter care.

(2) The youth may be detained in a jail or other facility for the detention of adults only if:

(a) the facilities in subsection (1) are not available or do not provide adequate security;

(b) the detention is in an area physically and visually separate and removed from those of adults;

(c) it appears to the satisfaction of the court that public safety and protection reasonably require detention; and

(d) the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214.

41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer must notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and is completely separated from adult offenders. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be sheltered in a place approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213.

Part 4

Informal Proceeding

41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing and signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2).

41-5-402. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3).

41-5-403. Disposition permitted under informal adjustment. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in a licensed foster home or other home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state youth correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979.

Part 5

Proceeding on Petition

41-5-501. Petition — form and content. A petition initiating proceedings under this chapter shall be signed by the county attorney and shall be entitled "In the Matter of ...., a youth" and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense, which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date, and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse of the youth and, if none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in detention or shelter care and, if so, the place of detention or shelter care and the time he was detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215.

41-5-502. Summons. (1) After a petition has been filed, summons shall be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) such other persons as the court may direct.

(2) The summons shall:

(a) require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth

and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is in shelter care or detained under any provision of this chapter pending an adjudication, the court, upon petition of the youth, his parents or guardian, or his counsel, shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care.

History: **En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216.**

41-5-503. Service of summons. (1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-502(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: **En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217.**

41-5-504 through 41-5-510 reserved.

41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to a state correctional facility or to the department of institutions for a period of more than 6 months may result from adjudication.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979.

41-5-512. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4).

41-5-513. Right to confront witnesses. In a proceeding on a petition, a party is entitled to:

(1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(2) confront and cross-examine witnesses testifying against the party; and

(3) admit or deny the allegations against the party in the petition.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5).

41-5-514. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c).

41-5-515. Persons to be advised of rights. Persons afforded rights under this chapter shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6).

41-5-516. Time limitations on petition hearing — continuance. (1) Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within 15 days after all service is completed. However, either party may move for a continuance under subsection (2) of this section if the youth is not in custody.

(2) The youth court may, upon motion of either party or upon the court's own motion, order a continuance if the youth is not in custody and interests of justice so require. All motions for a continuance are addressed to the discretion of the youth court judge and must be considered in the light of the diligence shown on the part of the movant.

(3) Delays resulting from service of process or delays resulting from legal actions taken in behalf of the youth shall not be included in the 15-day time limitation.

History: En. 10-1219 by Sec. 19, Ch. 329, L. 1974; R.C.M. 1947, 10-1219; amd. Sec. 1, Ch. 215, L. 1979.

41-5-517 through 41-5-520 reserved.

41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded except when the court determines a closed hearing to be in the youth's best interest.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47.

History: En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979.

41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-5-805 and 41-5-806.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523(1)(f), is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim.

History: En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979.

41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth, consistent with subsection (d) of this section;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b).

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

In the district court for the .... judicial district

State of Montana)
) ss.
County of ......)

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
....	....	....
....	....	....

The names and addresses of their nearest relatives are:

....

....

Witness my hand this .... day of ...., A.D. 19...

....
Judge

History: **En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979.**

41-5-524. Consent decree with petition. (1) At any time after the filing of a petition alleging delinquency or need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted under this section shall conform to the procedures and dispositions specified in 41-5-401 through 41-5-403 relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which shall be reviewed by the court.

History: **En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224.**

41-5-525 through 41-5-530 reserved.

41-5-531. Posttrial motions. All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7).

41-5-532. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225.

41-5-533. Probation revocation — disposition. (1) A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation shall be screened, reviewed, and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228.

Part 6

Confidentiality of Proceedings — Records

41-5-601. Publicity. No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision except as provided in 41-5-521(5).

History: En. 10-1241 by Sec. 41, Ch. 329, L. 1974; R.C.M. 1947, 10-1241.

41-5-602. Law enforcement records. (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(f) the county attorney; or

(g) the youth, his parent, guardian, or counsel.

History: En. 10-1230 by Sec. 30, Ch. 329, L. 1974; amd. Sec. 10, Ch. 100, L. 1977; R.C.M. 1947, 10-1230.

41-5-603. Youth court records. (1) Youth court records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions, and other papers filed in a case, transcripts of testimony, findings, verdicts, orders, and decrees, shall be open to inspection by those persons and agencies listed in subsection (1) of this section and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed,

they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

History: En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979.

41-5-604. Disposition of records. (1) All court findings, orders, judgments, and the legal and social files and records of the court, probation services, and law enforcement agencies pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing. The records of youths who were 28 years old or older on July 1, 1974, may be destroyed with the consent of the youth court judge or county attorney.

(5) This section shall not apply to youth traffic records.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979.

Part 7

Probation Officers

41-5-701. Appointment of probation officers. The youth court judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this chapter. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. No person while serving as a law enforcement officer may be appointed or perform the duties of a full-time or part-time probation officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979.

41-5-702. Qualifications of probation officers. (1) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-703; or

(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer, provided preference shall be given to persons with the qualifications set forth in subsection (1).

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2).

41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(2) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5).

41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a sum specified by the court; however, the judge may employ him on a yearly salary, not to be less than $15,000 or more than $20,000 depending on the formal training and experience of each respective officer. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one county whereby such county shall pay the entire salary.

(2) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979.

41-5-705. Deputy probation officers — salary. The judge having jurisdiction of juvenile matters may also appoint such additional persons, giving preference to persons having the qualifications suggested for appointment as the chief probation officer, to serve as deputy probation officers as the judge deems necessary, their salaries to be fixed by the judge. Such salaries shall not exceed 90% or be less than 60% of the salary of the chief probation officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979.

Part 8

Custodial Care

41-5-801. Shelter care and foster homes. (1) The youth court may establish procedures for finding, maintaining, and administering shelter care and foster homes or other homes approved by the court for youth within the provisions of this chapter.

(2) All foster homes established by the youth court which are licensed by the department of social and rehabilitation services shall be financed by the department as set forth in 53-2-201(1)(b).

(3) The licensed shelter care and foster homes established under this section shall be funded at a rate consistent with other shelter care and foster homes established for other purposes under law. Shelter care as defined by this chapter may be funded through state appropriation to the youth courts and the departments of institutions and social and rehabilitation services.

History: En. 10-1236 by Sec. 36, Ch. 329, L. 1974; amd. Sec. 11, Ch. 100, L. 1977; amd. Sec. 12, Ch. 571, L. 1977; R.C.M. 1947, 10-1236.

41-5-802. Shelter care and detention facilities. (1) (a) In all counties the county commissioners may provide, by purchase, lease, or otherwise, a place to be known as the youth detention facility, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths and youths in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases.

(b) The judge having jurisdiction may appoint such personnel as required, who shall have charge of said facility and of the youths detained therein.

(c) The compensation of such personnel shall be fixed by the court, and such compensation and the maintaining of such facility shall be paid out of the county treasury which may be supplemented by state appropriation and federal funds.

(2) (a) Youth courts and nonprofit corporations may provide by purchase, lease, or otherwise, a place to be known as a shelter care facility.

(b) Such facility shall be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(c) Such facility shall be separate and apart from any facility housing adults charged with criminal offenses.

(d) State appropriations and federal funds may be received by the youth court or private nonprofit corporations for establishment, maintenance, or operation of such facility.

(e) Such facility shall be furnished in a comfortable manner and be as nearly as possible like a family home.

History: En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237.

41-5-803. Support of youth committed to a custodial agency. (1) When a youth under this chapter is committed by the court to custody other than that of his parents and no provision is otherwise made by law for the support of such youth, compensation for the care of such youth, when approved by order of the court, shall be a charge upon the county or the appropriate division thereof.

(2) Whenever the provisions of 41-5-805 and 41-5-806 do not apply, the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct such sum as will cover, in whole or in part, the support of such youth. In determining the amount the parents must pay, the court shall use the standards set out in Title 53, chapter 1, part 4, and the department of institutions' rules governing payment for care of residents of institutions as those provisions and rules apply to the youth and parents before the court. If such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence or said cost may be collected in a civil action against the parent or parents.

History: En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R.C.M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974; amd. Sec. 8, Ch. 450, L. 1977; R.C.M. 1947, 10-1238; amd. Sec. 10, Ch. 567, L. 1979.

41-5-804. Transfer of custody to private agency — reports. When the legal custody of a youth is vested in a public agency under the provisions of this chapter, the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary, but not less often than once each 6 months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: En. 10-1227 by Sec. 27, Ch. 329, L. 1974; R.C.M. 1947, 10-1227.

41-5-805. Financial investigation by county welfare department. (1) Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a foster home, child care agency, group home, or private treatment facility and the department of social and rehabilitation services is responsible for all or part of the cost of such placement, the probation officer or the court shall notify the department of social and rehabilitation services and order the county welfare department in the youth's county of residence to conduct an investigation of the financial status of the youth's parents or guardianship assets. Following an adjudicatory hearing in which a youth is determined to be a delinquent youth or a youth in need of supervision, the court may order the county welfare department to conduct a financial status investigation.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the youth in the foster home, child care agency, group home, or private treatment facility. A written report of the investigation shall be filed with the court having jurisdiction, the department of social and rehabilitation services, and the

department of institutions, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

History: **En. Sec. 11, Ch. 567, L. 1979.**

41-5-806. Order for financial support. (1) Upon receipt of a financial status report pursuant to 41-5-805, a court providing for disposition of a youth under 41-5-523 or 41-5-524 shall hold a hearing to determine the ability of the youth's parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. If feasible, this hearing may be held in conjunction with a dispositional hearing under 41-5-522. In cases involving informal adjustment under 41-5-403, the department may petition the district court having jurisdiction for a hearing to determine the financial ability of the parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution.

(2) In addition to the report prepared under 41-5-805, any evidence concerning financial status may be introduced. In determining financial ability, the court shall consider the report and other evidence introduced at the hearing.

(3) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the order may be modified.

History: **En. Sec. 12, Ch. 567, L. 1979.**

Part 9

District Youth Guidance Homes

41-5-901. Establishment of district youth guidance home program. The legislature, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible and in order to reduce the need for custodial care in existing state youth correctional facilities, establishes by this part a district youth guidance home program to provide facilities and services for the rehabilitation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions.

History: **En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R.C.M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974; amd. Sec. 12, Ch. 100, L. 1977; amd. Sec 14, Ch. 571, L. 1977; R.C.M. 1947, 10-1242.**

41-5-902. Rules. The director of the department of institutions may adopt reasonable rules and standards to carry out the administration and purposes of this part.

History: **En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R.C.M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974; amd. Sec. 16, Ch. 100, L. 1977; R.C.M. 1947, 10-1251.**

41-5-903. Power of nonprofit corporations to establish homes — power to receive facilities and funds. In any judicial district nonprofit corporations or associations may be formed or organized for the purpose of establishing district youth guidance homes and to receive from the department of institutions and other governmental units such services, facilities, and funds as the department or other governmental units may be authorized by law to provide.

History: **En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R.C.M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974; R.C.M. 1947, 10-1244.**

41-5-904 through 41-5-910 reserved.

41-5-911. Per diem charge to financially able parents. A youth court judge placing a delinquent youth or a youth in need of supervision in a district youth guidance home may require the parents or parent to pay to the district youth guidance home a per diem charge as the judge may determine under the standards set out in Title 53, chapter 1, part 4, and the department of institutions' rules governing payments for care of residents of institutions as those provisions and rules apply to the youth and parent or parents before the court.

History: **En. Sec. 8, Ch. 427, L. 1971; Sec. 10-1108, R.C.M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974; amd. Sec. 15, Ch. 100, L. 1977; amd. Sec. 9, Ch. 450, L. 1977; R.C.M. 1947, 10-1249.**

41-5-912. Governmental aid to nonprofit organizations. (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations to provide facilities and services for delinquent youths and youths in need of supervision in district youth guidance homes and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are hereby authorized, at their own expense, to provide funds, materials, facilities, and services for district youth guidance homes.

History: **En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R.C.M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974; R.C.M. 1947, 10-1245.**

41-5-913. Federal assistance. The department of institutions may make application for and receive federal-aid money or other assistance which might become available for programs in the nature of the one created by this part.

History: **En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R.C.M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974; amd. Sec. 17, Ch. 100, L. 1977; R.C.M. 1947, 10-1252.**

41-5-914 through 41-5-920 reserved.

41-5-921. Petition by person under twenty-one to be placed in district youth guidance home. Any person under the age of 18 years or any person between the ages of 18 and 21 years who is still within the jurisdiction of the youth court may petition the youth court of a district in which a district youth guidance home has been established to be placed in a district youth guidance home for any period of time up to said person's 21st birthday.

History: En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R.C.M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974; R.C.M. 1947, 10-1247.

41-5-922. Placement of youths by department of institutions. The department of institutions is hereby authorized as part of its aftercare program to place a delinquent youth or a youth in need of supervision in a district youth guidance home subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R.C.M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974; R.C.M. 1947, 10-1250.

41-5-923. Authority of youth court judge to commit delinquent youths and youths in need of supervision. A youth court judge is hereby authorized in his discretion to place a delinquent youth or a youth in need of supervision in a district youth guidance home for any period of time up to the child's 21st birthday subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R.C.M. 1947; amd. and redes. 10-1246 by Sec. 46, Ch. 329, L. 1974; amd. Sec. 13, Ch. 100, L. 1977; R.C.M. 1947, 10-1246.

41-5-924. Continuing jurisdiction of youth court over youths. The youth court placing a delinquent youth or a youth in need of supervision in a district youth guidance home shall retain continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by order of the court.

History: En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R.C.M. 1947; amd. and redes. 10-1248 by Sec. 48, Ch. 329, L. 1974; amd. Sec. 14, Ch. 100, L. 1977; R.C.M. 1947, 10-1248.

CHAPTER 6

INTERSTATE COMPACT ON JUVENILES

Part 1 — Text of Compact

Section
41-6-101. Enactment — provisions.
41-6-102. Juvenile compact administrator.
41-6-103. Supplementary agreements.
41-6-104. Financial arrangements.
41-6-105. Responsibilities of courts, state departments, agencies, and officers.
41-6-106. Additional procedures not precluded.

Part 1

Text of Compact

41-6-101. Enactment — provisions. The Interstate Compact on Juveniles as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I. Findings and Purposes

(1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(a) cooperative supervision of delinquent juveniles on probation or parole;

(b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.

(2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies

All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions

For the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways

(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the

appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

Article V. Return of Escapees and Absconders

(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court

or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.

Article VI. Voluntary Return Procedure

Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of

Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees

(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.

(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will

be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs

(1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of cost or responsibilities therefor.

(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.

Article IX. Detention Practices

To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.

Article X. Supplementary Agreements

The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;

(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid

Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Article XII. Compact Administrators

The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation

This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.

Article XV. Severability

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 76, L. 1967; R.C.M. 1947, 10-1001.

41-6-102. Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History: En. Sec. 2, Ch. 76, L. 1967; R.C.M. 1947, 10-1002.

41-6-103. Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: En. Sec. 3, Ch. 76, L. 1967; R.C.M. 1947, 10-1003.

41-6-104. Financial arrangements. The compact administrator, subject to the approval of the department of administration, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History: En. Sec. 4, Ch. 76, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 10-1004.

41-6-105. Responsibilities of courts, state departments, agencies, and officers. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History: En. Sec. 5, Ch. 76, L. 1967; R.C.M. 1947, 10-1005.

41-6-106. Additional procedures not precluded. In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History: **En. Sec. 6, Ch. 76, L. 1967; R.C.M. 1947, 10-1006.**

TITLES 42 AND 43

RESERVED

TITLE 44

LAW ENFORCEMENT

Ch.
1. Highway Patrol.
2. Investigation, Communication, and Identification.
3. Montana Forensic Science System Act.
4. Miscellaneous Functions of Department of Justice.
5. Criminal Justice Information.
Chapters 6 through 9 reserved.
10. Law Enforcement Academy.
11. Mutual Assistance — Rights of Assisting Officers.
12. Seizures Related to Controlled Substances.

CHAPTER 1

HIGHWAY PATROL

Part 1 — General Provisions

Section
44-1-101. Creation of highway patrol.
44-1-102. General duties of division.
44-1-103. Authority to make rules.
44-1-104. Duty to furnish governor with transportation.
44-1-105. Division to furnish equipment.
44-1-106. Authority of division to dispose of equipment.

Part 2 — Highway Patrol Chief

44-1-201. Appointment and tenure.
44-1-202. Qualifications.
44-1-203. Salary and expenses.

Part 3 — Powers and Duties of Chief Relating to Patrolmen

44-1-301. General supervisory powers.
44-1-302. Powers relating to supervisory personnel.
44-1-303. Duties.

Part 4 — Appointment of Patrolmen

44-1-401. Qualifications of patrolmen.
44-1-402. Appointment of supervisory personnel.
44-1-403. Equal number of appointments from each highway district.
44-1-404. Status of replacements for patrolmen who enter the armed forces.

Part 5 — Salaries of Patrolmen

44-1-501. Payment of salaries.
44-1-502. Payment of compensation for time spent answering subpoena.
44-1-503. Salary upon permanent appointment.
Sections 44-1-504 through 44-1-510 reserved.
44-1-511. Payment of salary benefit to officers injured in performance of duty.
44-1-512. Determination of eligibility for salary benefit.

44-1-513. Periodic medical examinations — waiver of right to salary benefit.
44-1-514. Discontinuation of salary benefit when retirement allowance granted.
44-1-515. Assignment to light duty or another position within department of justice.
44-1-516. Effect on probationary status.
44-1-517. Subrogation.
44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit.

Part 6 — Probationary Status and Tenure

44-1-601. Probationary training and service — patrolmen.
44-1-602. Probationary training and service — supervisory personnel.
Sections 44-1-603 through 44-1-610 reserved.
44-1-611. Tenure.
44-1-612. Cause for suspension, demotion, or discharge.

Part 7 — Disciplinary Action—Preliminary Procedure

44-1-701. Authority of division to suspend, demote, or reprimand.
44-1-702. Preferring charges.
44-1-703. When charges dismissed.
44-1-704. When division to order hearing.
44-1-705. Suspension pending hearing and decision.

Part 8 — Disciplinary Action—Hearing and Decision

44-1-801. Notice of hearing.
44-1-802. Authority of division — conduct of hearing.
44-1-803. Rights of accused.
44-1-804. Rendering and filing of decision.
44-1-805. Reinstatement and backpay upon exoneration.
44-1-806. Disciplinary action.
44-1-807. Length of suspension.
44-1-808. Demotion pay status.

Part 9 — Disciplinary Action—Appeal to Court

44-1-901. Right to appeal.
44-1-902. Action by court.
44-1-903. Reinstatement and backpay upon reversal or modification.

Part 10 — Jurisdiction of Patrolmen

44-1-1001. Offenses for which patrolmen may make arrests.
44-1-1002. No authority in labor disputes.
44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles.
44-1-1004. Authority concerning livestock or livestock products in transit.
44-1-1005. Enforcement of motor carriers' licensing law.

Part 11 — Procedure for Arrests

44-1-1101. Duty of patrolman upon making an arrest.
44-1-1102. Procedure when patrolman accepts bail.
44-1-1103. Check in lieu of cash.

Part 1

General Provisions

44-1-101. Creation of highway patrol. There is hereby created a "Montana highway patrol" under the control and supervision of the division of motor vehicles, department of justice.

History: En. Sec. 1, Ch. 199, L. 1943; R.C.M. 1947, 31-101.

44-1-102. General duties of division. The division shall provide for clerical help, for the maintenance of the patrol, and for the employment and supervision of the patrol in conformity with the provisions of this chapter.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part).

44-1-103. Authority to make rules. The division may make, promulgate, and amend rules which prescribe procedures and practice requirements of the Montana highway patrol.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part).

44-1-104. Duty to furnish governor with transportation. The division shall furnish the governor with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part).

44-1-105. Division to furnish equipment. The division shall furnish patrolmen with automobiles equipped and fitted with a distinctive siren and a particularly designated light for use at night. The division shall furnish all patrolmen with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts. Any such equipment and uniforms shall remain the property of the state of Montana.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part).

44-1-106. Authority of division to dispose of equipment. The division shall have authority to destroy, sell, or dispose of any and all obsolete equipment or uniforms or parts thereof, and any moneys received therefrom shall be paid into the state general fund.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part).

Part 2

Highway Patrol Chief

44-1-201. Appointment and tenure. The attorney general shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

44-1-202. Qualifications. The person named as chief shall have been a continuous resident of Montana for at least 5 years.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

44-1-203. Salary and expenses. The chief shall receive a salary fixed by the attorney general within the limits of the legislative appropriation for such purpose and travel expenses, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Part 3

Powers and Duties of Chief Relating to Patrolmen

44-1-301. General supervisory powers. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the attorney general.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 1, Ch. 146, L. 1979.

44-1-302. Powers relating to supervisory personnel. The duties and jurisdiction of the supervisory personnel shall be outlined and defined by and under the control of the chief.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 2, Ch. 146, L. 1979.

44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrolmen;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of such employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrolman of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 3, Ch. 146, L. 1979.

Part 4

Appointment of Patrolmen

44-1-401. Qualifications of patrolmen. Patrolmen shall possess the following qualifications:

(1) sound and active physical and mental condition;
(2) good moral character;
(3) residency in Montana for at least 1 year immediately prior to appointment;
(4) having passed a satisfactory test in the operation of automobiles;
(5) citizenship in the United States and state of Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(3).

44-1-402. Appointment of supervisory personnel. Supervisory personnel shall be selected from the patrolmen by the chief. The chief shall designate supervisory personnel, including but not limited to captains, lieutenants, sergeants, and patrolmen, in such numbers as necessary but within the limits of the legislative appropriation made available for such purposes.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 4, Ch. 146, L. 1979.

44-1-403. Equal number of appointments from each highway district. Replacements and additions to the highway patrol force shall be chosen in equal numbers from the 12 highway districts. However, if sufficient qualified applications are not received from any one district, the division may, in its discretion, substitute other qualified applicants from any other districts.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(b).

44-1-404. Status of replacements for patrolmen who enter the armed forces. Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States shall, on the return of the incumbents, be placed in the patrol reserve without pay, except that they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall be used for future replacements in the permanent patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(c); amd. Sec. 1, Ch. 7, L. 1979.

Part 5

Salaries of Patrolmen

44-1-501. Payment of salaries. All salaries of members of the highway patrol shall be paid out of the highway department's account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 285, L. 1971; R.C.M. 1947, 31-105.1; amd. Sec. 2, Ch. 7, L. 1979.

44-1-502. Payment of compensation for time spent answering subpoena. A highway patrolman shall receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when he has been called to testify in connection with his official patrol duties. The department of justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.

History: En. 31-105.2 by Sec. 1, Ch. 221, L. 1977; R.C.M. 1947, 31-105.2.

44-1-503. Salary upon permanent appointment. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of a patrolman.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(2).

44-1-504 through 44-1-510 reserved.

44-1-511. Payment of salary benefit to officers injured in performance of duty. (1) A member of the highway patrol who, in the performance of his duties, suffers an injury which necessitates medical or other remedial treatment and which renders him unable to perform his duties shall be paid the full amount of his regular salary as a salary benefit until one of the following occurs:

(a) He ceases to be disabled.

(b) A period of 1 year elapses after the date of the injury.

(c) Although disabled, he is ordered returned to light duty by the chief of the highway patrol.

(d) Although disabled, he accepts a transfer position within the department of justice.

(e) He waives his benefit.

(2) The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section.

History: En Sec. 1, Ch. 317, L. 1979.

44-1-512. Determination of eligibility for salary benefit. (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of his duties and whether an injury so incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion in his discretion.

History: En Sec. 2, Ch. 317, L. 1979.

44-1-513. Periodic medical examinations — waiver of right to salary benefit. (1) The chief may appoint a physician to examine the officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under subsection (1) or 44-1-512(2) waives any salary benefit to which he might otherwise be entitled under 44-1-511.

History: **En Sec. 3, Ch. 317, L. 1979.**

44-1-514. Discontinuation of salary benefit when retirement allowance granted. Payment of a salary benefit under 44-1-511 shall be discontinued if the injured officer is disabled for an indefinite period and is granted a disability retirement allowance under Title 19, chapter 6. If an officer is indefinitely disabled and does not apply for a disability retirement allowance, application therefor may be made by the chief.

History: **En Sec. 4, Ch. 317, L. 1979.**

44-1-515. Assignment to light duty or another position within department of justice. (1) The chief, taking into consideration the medical opinions he has received, may determine at any time that an injured officer is able to perform light police duty consistent with his status as a law enforcement officer and may order the officer assigned to such light duty. If the officer refuses to perform the light duty, payment of the salary benefit under 44-1-511 shall be discontinued.

(2) The chief may order an injured officer transferred from the highway patrol to another position within the department of justice. An officer may decline to accept a transfer under this subsection with no loss of salary benefit.

History: **En Sec. 5, Ch. 317, L. 1979.**

44-1-516. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: **En Sec. 6, Ch. 317, L. 1979.**

44-1-517. Subrogation. The state has a cause of action for reimbursement of sums it has paid to an officer as a salary benefit and for medical treatment and examinations against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the state.

History: **En Sec. 7, Ch. 317, L. 1979.**

44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit. (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 shall be credited to the length of service computed for retirement purposes under 19-6-302.

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the

department of justice that is covered under the Public Employees' Retirement System Act, all of the officer's length of service credited with the Montana patrolmen's retirement system shall be transferred to the public employees' retirement system in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrolmen's retirement account shall be transferred to the public employees' retirement account in the officer's credit. The state's "adjusted contributions" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system.

History: En Sec. 8, Ch. 317, L. 1979.

Part 6

Probationary Status and Tenure

44-1-601. Probationary training and service — patrolmen. A new patrolman shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary patrolman will automatically be discharged.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(a); amd. Sec. 3, Ch. 7, L. 1979; amd. Sec. 5, Ch. 146, L. 1979.

44-1-602. Probationary training and service — supervisory personnel. All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary supervisory personnel will automatically revert to their previous ranks without prejudice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(b); amd. Sec. 4, Ch. 7, L. 1979; amd. Sec. 6, Ch. 146, L. 1979.

44-1-603 through 44-1-610 reserved.

44-1-611. Tenure. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrolman, or any other rank under and pursuant to the provisions of this chapter, except as provided in 44-1-601 and 44-1-602, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided for one or more of the causes specified in 44-1-612.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(5).

44-1-612. Cause for suspension, demotion, or discharge. Cause for suspension, demotion, or discharge is:

(1) conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(2) gross neglect of duty or willful violation or disobedience of orders or regulations;

(3) loitering about or entering places of ill fame or ill repute or in which illegal gambling is known to be conducted or to be in progress, except in the immediate discharge of duty;

(4) conduct unbecoming an officer;

(5) drinking intoxicating liquor while using state-owned cars or in uniform or being intoxicated in a public place;

(6) sleeping while on duty;

(7) incapacity or partial incapacity materially affecting ability to perform official duties;

(8) gross inefficiency in performing duties; or

(9) willful disobedience of rules adopted by the division governing the conduct and discipline of members of the patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(6); amd. Sec. 5, Ch. 7, L. 1979.

Part 7

Disciplinary Action — Preliminary Procedure

44-1-701. Authority of division to suspend, demote, or reprimand. When the division has cause to believe that any member of the highway patrol has violated any of the grounds for suspension, demotion, or discharge or his conduct has warranted reprimanding, it may suspend, demote, or reprimand the member.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(a).

44-1-702. Preferring charges. (1) The charge or charges against any member of the highway patrol shall be made in writing and signed and sworn to by the person making the charge or charges.

(2) The written charge or charges shall be filed with the division.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(a) thru (c).

44-1-703. When charges dismissed. When charges are filed and the division believes such charge or charges do not constitute grounds for suspension, demotion, or discharge, it shall dismiss such charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959;

amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(e).

44-1-704. When division to order hearing. When charges are filed and the division believes that such charge or charges constitute grounds for suspension, demotion, or discharge, it shall order a hearing to be had thereon before it and fix a time for such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(d).

44-1-705. Suspension pending hearing and decision. If the division orders a hearing, the chief may suspend such patrolman pending the rendition of the decision made in such case.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(b); amd. Sec. 7, Ch. 146, L. 1979.

Part 8

Disciplinary Action Hearing and Decision

44-1-801. Notice of hearing. (1) The division shall, at least 10 days before the time appointed for a hearing, serve written notice on the accused patrolman, specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) If the accused patrolman is located within the state and his whereabouts is known, the service required by subsection (1) shall be made personally. If the accused patrolman is located outside the state and his whereabouts is known, service may be made by mailing the written notice to his place of residence. If, at the time, the whereabouts of the accused patrolman is unknown, service may be made upon him by mailing the written notice to him at his last-known place of residence in Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(10); amd. Sec. 6, Ch. 7, L. 1979.

44-1-802. Authority of division — conduct of hearing. (1) The division shall be the authority to hear such charge or charges and render a decision and appropriate order.

(2) The division shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and, for those purposes, to issue subpoenas and cause the same to be served and executed in any part of the state.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959;

amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(a), (11)(b).

44-1-803. Rights of accused. The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf. He shall be entitled to be represented by counsel at such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(c).

44-1-804. Rendering and filing of decision. The division shall, within 15 days after such hearing, render its decision in writing and file same in its office, with the chief, and with the patrolman accused.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(d).

44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the division finds that the charge or charges made against the patrolman are not true, the division shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(b); amd. Sec. 7, Ch. 7, L. 1979.

44-1-806. Disciplinary action. If after a hearing the division finds that any charge or charges made against the patrolman are true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(a); amd. Sec. 8, Ch. 7, L. 1979.

44-1-807. Length of suspension. A member under suspension shall be on leave without pay for a period not to exceed 30 days.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(a); amd. Sec. 9, Ch. 7, L. 1979.

44-1-808. Demotion pay status. In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(b).

Part 9

Disciplinary Action — Appeal to Court

44-1-901. Right to appeal. (1) Any patrolman who is suspended, demoted, or discharged has a right of appeal to the district court of Lewis and Clark County.

(2) The appeal must be made within 10 days after the decision or determination of the division.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(a), (13)(b); amd. Sec. 10, Ch. 7, L. 1979.

44-1-902. Action by court. The district court shall review such decision or determination in a summary manner and render its decision upon such appeal within 90 days from the filing of such appeal in said court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(c).

44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the division is finally reversed or modified by the district court, the accused patrolman must be reinstated in his position. Upon reinstatement, the division shall pay to the patrolman any salary or wages withheld from him pending the determination of the charge or charges or take such action as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(d); amd. Sec. 11, Ch. 7, L. 1979.

Part 10

Jurisdiction of Patrolmen

44-1-1001. Offenses for which patrolmen may make arrests. (1) The highway patrol chief and all patrolmen may make arrests for the offenses listed in subsection (2) under the following circumstances:

(a) the offense is committed in the presence of the chief or any patrolman;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(a) deliberate homicide;

(b) assault with a deadly weapon;

(c) arson;

(d) criminal mischief;

(e) burglary;

(f) theft;
(g) kidnapping;
(h) illegal transportation of narcotics; or
(i) violation of the Dyer Act regarding the transportation of stolen automobiles.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 12, Ch. 7, L. 1979.

44-1-1002. No authority in labor disputes. Such highway patrolmen have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part).

44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles. Patrolmen are considered police officers for the purpose of making arrests for all offenses occurring on the highways, highway rest areas, state highway properties adjacent to the highway, or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(2); amd. Sec. 1, Ch. 645, L. 1979.

44-1-1004. Authority concerning livestock or livestock products in transit. Patrolmen may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. If the patrolmen have good reason to believe that livestock or livestock products have been stolen, they may take possession of the same until the livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(3).

44-1-1005. Enforcement of motor carriers' licensing law. A highway patrolman has the same authority to enforce provisions of the motor carriers' licensing law as that granted the public service commission under 69-12-203. The division shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(4); amd. Sec. 13, Ch. 7, L. 1979.

Part 11

Procedure for Arrests

44-1-1101. Duty of patrolman upon making an arrest. Upon making an arrest, a patrolman shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace; or

(3) accept bail determined pursuant to Title 46, chapter 9, part 3.

History: **En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 14, Ch. 7, L. 1979.**

44-1-1102. Procedure when patrolman accepts bail. If the patrolman accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The patrolman shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrolman for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

History: **En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 15, Ch. 7, L. 1979.**

44-1-1103. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrolmen or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash provided that:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents identifying him.

(2) If a check is offered in lieu of cash, the highway patrolman or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond which is returned for insufficient funds is subject to prosecution under 45-6-316, and obtaining bond constitutes securing services for the purposes of that section.

History: **En. 31-112.1 by Sec. 1, Ch. 295, L. 1977; R.C.M. 1947, 31-112.1.**

CHAPTER 2

INVESTIGATION, COMMUNICATION, AND IDENTIFICATION

Part 1 — Bureau of Criminal Investigation

Section

44-2-101. Bureau of criminal investigation created.
44-2-102. Location of bureau.
44-2-103. Repealed. Sec. 27, Ch. 525, L. 1979.
Sections 44-2-104 through 44-2-110 reserved.
44-2-111. Definition of "agent".
44-2-112. Appointment of agents and assisting personnel.
44-2-113. Qualifications of agents.
44-2-114. Personnel covered by PERS.
44-2-115. Powers and duties of agents.
44-2-116. Cooperation of state agencies.

Part 2 — State System of Criminal Identification

44-2-201. Establishment of state system.
44-2-202. Assistance to and instruction of local officers.
44-2-203. Repealed. Sec. 27, Ch. 525, L. 1979.
44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.
44-2-205. Withholding of salary of officer who fails to provide information.
44-2-206. Cooperation with FBI and other states.

Part 3 — Teletypewriter Communications System

44-2-301. Establishment — inclusion of other state agencies.
44-2-302. Powers of attorney general.
44-2-303. Federal cost sharing.
44-2-304. Report by attorney general.
Sections 44-2-305 through 44-2-310 reserved.
44-2-311. Participation by local and other agencies.
44-2-312. Authorization of monthly operational charge.
44-2-313. Payment of charge.
44-2-314. Use of moneys — records.
44-2-315. Removal from network upon nonpayment.
44-2-316. Assessment for personnel.

Part 1

Bureau of Criminal Investigation

44-2-101. Bureau of criminal investigation created. There is hereby created a permanent bureau of criminal investigation within the office of the attorney general, as provided for in 2-15-2003.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(1).

44-2-102. Location of bureau. The location of the bureau of criminal investigation and its personnel shall be at the discretion of the attorney general.

History: En. Sec. 7, Ch. 176, L. 1967; amd. Sec. 7, Ch. 219, L. 1971; R.C.M. 1947, 82-420.

44-2-103. Repealed. Sec. 27, Ch. 525, L. 1979.

44-2-104 through 44-2-110 reserved.

44-2-111. Definition of "agent". As used in this part, "agent" means a person appointed to the bureau of criminal investigation within the attorney general's office.

History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971; R.C.M. 1947, 82-415.

44-2-112. Appointment of agents and assisting personnel. The attorney general shall appoint agents and other necessary assisting personnel and fix their compensation.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(2).

44-2-113. Qualifications of agents. Each agent shall be a person qualified by experience, training, and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(3).

44-2-114. Personnel covered by PERS. All agents and assisting personnel shall be covered by the public employees' retirement system.

History: En. Sec. 5, Ch. 176, L. 1967; amd. Sec. 5, Ch. 219, L. 1971; R.C.M. 1947, 82-418.

44-2-115. Powers and duties of agents. An agent shall:

(1) assist city, county, state, and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) assist any law enforcement school held in the state for law enforcement officers when requested;

(3) act as a peace officer, as defined in the laws of Montana, when engaged in assisting or acting under the direction of city, county, state, and federal law enforcement agencies as provided in this section.

History: En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971; R.C.M. 1947, 82-416; amd. Sec. 16, Ch. 7, L. 1979.

44-2-116. Cooperation of state agencies. All state departments and agencies shall cooperate with such agents and assisting personnel in providing transportation and educational and laboratory facilities for their use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967; amd. Sec. 6, Ch. 219, L. 1971; R.C.M. 1947, 82-419.

Part 2

State System of Criminal Identification

44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete state system of criminal identification.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part); amd. Sec. 17, Ch. 7, L. 1979.

44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law enforcement officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint records.

History: En. Sec. 37, Ch. 199, L. 1965; R.C.M. 1947, 80-2006; amd. Sec. 18, Ch. 7, L. 1979.

44-2-203. Repealed. Sec. 27, Ch. 525, L. 1979.

44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.

44-2-205. Withholding of salary of officer who fails to provide information. The department shall report to the attorney general the failure of any officer to provide information as required by law. After an investigation of the report, the attorney general may order the proper disbursing officer to withhold payment of the salary of the officer who failed to provide the information until the information is given to the department.

History: **En. Sec. 35, Ch. 199, L. 1965; R.C.M. 1947, 80-2004.**

44-2-206. Cooperation with FBI and other states. The department shall cooperate with identification bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.

History: **En. Sec. 36, Ch. 199, L. 1965; R.C.M. 1947, 80-2005.**

Part 3

Teletypewriter Communications System

44-2-301. Establishment — inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype. He is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

History: **En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969; R.C.M. 1947, 82-3901.**

44-2-302. Powers of attorney general. To carry out the provisions of this part, the attorney general is authorized to:

(1) purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this part;

(2) employ such personnel as may be necessary to operate such facilities within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified.

History: **En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(a), (b).**

44-2-303. Federal cost sharing. The attorney general shall contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general may sign agreements with the federal agencies. Any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited in the system's account and shall be used, if at all possible, to reduce the spending of money appropriated from the general fund.

History: **En. Sec. 5, Ch. 1, Ex. L. 1967; amd. Sec. 5, Ch. 145, L. 1969; R.C.M. 1947, 82-3905; amd. Sec. 19, Ch. 7, L. 1979.**

44-2-304. Report by attorney general. The attorney general shall prepare a report in detail covering the operations of the communications network, the accounting of all moneys received and expended, and the need to expand or improve the system. He shall submit such report to the appropriations committee of every legislature at the time funds are requested for the administration of this part.

History: **En. Sec. 6, Ch. 1, Ex. L. 1967; amd. Sec. 6, Ch. 145, L. 1969; R.C.M. 1947, 82-3906.**

44-2-305 through 44-2-310 reserved.

44-2-311. Participation by local and other agencies. Any county, city, or other law enforcement agency may, with the approval of the attorney general, connect to the system and participate in it upon payment of or agreement to pay those costs established by the department of justice.

History: **En. Sec. 4, Ch. 1, Ex. L. 1967; amd. Sec. 4, Ch. 145, L. 1969; R.C.M. 1947, 82-3904.**

44-2-312. Authorization of monthly operational charge. The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system.

History: **En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).**

44-2-313. Payment of charge. Such charge shall be billed monthly to the agencies. Payments made as a result of the billing shall be remitted to the attorney general and deposited by him in a special account in the state treasury.

History: **En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part); amd. Sec. 20, Ch. 7, L. 1979.**

44-2-314. Use of moneys — records. The state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties.

History: **En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).**

44-2-315. Removal from network upon nonpayment. Law enforcement agencies, other than the state of Montana or any of its subdivisions, that become 90 days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the department of justice shall take the necessary steps to carry out this provision.

History: **En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).**

44-2-316. Assessment for personnel. A special prorated assessment shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie. This assessment shall be made monthly the same as the operational charge. It shall be transmitted, deposited, and drawn by warrant as are other warrants as provided in 44-2-312 through 44-2-315, except that the assessment may not be levied against the one central station for which the assessment is made.

History: **En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(d); amd. Sec. 21, Ch. 7, L. 1979.**

CHAPTER 3

MONTANA FORENSIC SCIENCE SYSTEM ACT

Part 1 — General Provisions
Division of Forensic Science

Section
44-3-101. Short Title.
44-3-102. Purpose.
44-3-103. Definition of division of forensic science.
44-3-104. Functions of division.
44-3-105. Authority to accept grants.
44-3-106. Power of attorney general to employ personnel.

Part 2 — Medical Examiners

44-3-201. Definition of state medical examiner.
44-3-202. Removal of state medical examiner.
44-3-203. Associate medical examiners — qualifications.
44-3-204. Associate medical examiners — compensation.
Sections 44-3-205 through 44-3-210 reserved.
44-3-211. Duties of state medical examiner — general.
44-3-212. Duties of state medical examiner — appointments.
44-3-213. Report to county attorney.
44-3-214. Records.

Part 3 — Laboratory of Criminalistics

44-3-301. Purpose and functions of laboratory.
44-3-302. Fees for laboratory services.
44-3-303. Duties of laboratory director.
44-3-304. Removal of laboratory director.

Part 4 — Provisions Relating to Corpses

44-3-401. Exemption from liability for autopsy.
44-3-402. Disposition of property of deceased.
44-3-403. Burial of corpse.
44-3-404. Criminal penalty.

Part 1

General Provisions
Division of Forensic Science

44-3-101. Short title. This chapter shall be known as the "Montana Forensic Science System Act".

History: **En. 82-427 by Sec. 1, Ch. 530, L. 1977; R.C.M. 1947, 82-427.**

44-3-102. Purpose. The purposes of this chapter are to provide the personnel, facilities, and procedures to determine the cause of certain types of deaths by such investigation and examination as are in the public interest; to analyze specimens for law enforcement officers; and to provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

History: En. 82-428 by Sec. 2, Ch. 530, L. 1977; R.C.M. 1947, 82-428.

44-3-103. Definition of division of forensic science. "Division" or "division of forensic science" means the division of forensic science in the department of justice, provided for in 2-15-2004.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part).

44-3-104. Functions of division. The functions of the division include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology.

History: En. 82-430 by Sec. 4, Ch. 530, L. 1977; R.C.M. 1947, 82-430.

44-3-105. Authority to accept grants. The division of forensic science is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this chapter.

History: En. 82-431 by Sec. 5, Ch. 530, L. 1977; R.C.M. 1947, 82-431.

44-3-106. Power of attorney general to employ personnel. The attorney general is authorized to employ such personnel as may be necessary to conduct the affairs of the division of forensic science.

History: En. 82-435 by Sec. 9, Ch. 530, L. 1977; R.C.M. 1947, 82-435(part).

Part 2

Medical Examiners

44-3-201. Definition of state medical examiner. "State medical examiner" means the state medical examiner provided for in 2-15-2004.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part).

44-3-202. Removal of state medical examiner. The state medical examiner may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing pursuant to 2-18-1011 through 2-18-1013.

History: En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).

44-3-203. Associate medical examiners — qualifications. Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(1).

44-3-204. Associate medical examiners — compensation. (1) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(2) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(2), (3).

44-3-205 through 44-3-210 reserved.

44-3-211. Duties of state medical examiner — general. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this chapter;

(3) stimulating and directing research in the field of forensic pathology; and

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(1) thru (4).

44-3-212. Duties of state medical examiner — appointments. The duties of the state medical examiner include but are not limited to the following:

(1) appointing the director of the laboratory of criminalistics;

(2) appointing one or more associate medical examiners who serve at his pleasure; and

(3) appointing, if he considers it necessary, an administrative assistant to handle administrative duties.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(5) thru (7).

44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, the state medical examiner shall make available in writing to the county attorney his determination as to the cause of death.

History: En. 82-446 by Sec. 20, Ch. 530, L. 1977; R.C.M. 1947, 82-446; amd. Sec. 22, Ch. 7, L. 1979.

44-3-214. Records. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

History: En. 82-447 by Sec. 21, Ch. 530, L. 1977; R.C.M. 1947, 82-447.

Part 3

Laboratory of Criminalistics

44-3-301. Purpose and functions of laboratory. (1) The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers and all state agencies and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

History: **En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(1), (2).**

44-3-302. Fees for laboratory services. The laboratory may charge reasonable fees for its services, except that it may not charge state, county, city, or municipal law enforcement officers or coroners of this state for services rendered. Fees collected under this section shall be deposited in an account in the earmarked revenue fund in the state treasury and used to pay operation expenses of the laboratory.

History: **En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(3).**

44-3-303. Duties of laboratory director. The laboratory director shall:

(1) be responsible to the state medical examiner for supervision and direction of the laboratory.

(2) appoint laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the division.

History: **En. 82-439 by Sec. 13, Ch. 530, L. 1977; R.C.M. 1947, 82-439.**

44-3-304. Removal of laboratory director. The laboratory director may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing pursuant to 2-18-1011 through 2-18-1013.

History: **En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).**

Part 4

Provisions Relating to Corpses

44-3-401. Exemption from liability for autopsy. No criminal or civil action may arise against a medical examiner for performing an autopsy under this chapter.

History: **En. 82-441 by Sec. 15, Ch. 530, L. 1977; R.C.M. 1947, 82-441.**

44-3-402. Disposition of property of deceased. Any property found with or upon the person of the deceased which is not considered evidence shall be relinquished by the state medical examiner or the coroner to the appropriate public administrator to be held until disposed of according to law.

History: **En. 82-442 by Sec. 16, Ch. 530, L. 1977; R.C.M. 1947, 82-442.**

44-3-403. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

History: **En. 82-443 by Sec. 17, Ch. 530, L. 1977; R.C.M. 1947, 82-443.**

44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) purposely fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

History: **En. 82-445 by Sec. 19, Ch. 530, L. 1977; R.C.M. 1947, 82-445; amd. Sec. 23, Ch. 7, L. 1979.**

CHAPTER 4

MISCELLANEOUS FUNCTIONS OF DEPARTMENT OF JUSTICE

Part 1 — Training Coordinator for County Attorneys

Section
44-4-101. Position established.
44-4-102. Appointment.
44-4-103. Functions.

Part 2 — Confidential License Plates and Registrations

44-4-201. Authorization to issue confidential plates and registrations.
44-4-202. Authority of attorney general to adopt rules.
44-4-203. Registration records.
44-4-204. Applications for confidential plates and registrations.
44-4-205. Use of confidential plates and registrations.
44-4-206. Revocation.

Part 3 — Board of Crime Control

44-4-301. Functions.

Part 1

Training Coordinator for County Attorneys

44-4-101. Position established. There is created within the department of justice the position of training coordinator for county attorneys.

History: **En. Sec. 1, Ch. 353, L. 1973; R.C.M. 1947, 82-421; amd. Sec. 24, Ch. 7, L. 1979.**

44-4-102. Appointment. The training coordinator shall be appointed by the attorney general from a list of three names proposed and submitted by the Montana county attorneys' association.

History: En. Sec. 2, Ch. 353, L. 1973; R.C.M. 1947, 82-422.

44-4-103. Functions. The training coordinator shall perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function.

History: En. Sec. 3, Ch. 353, L. 1973; R.C.M. 1947, 82-423; amd. Sec. 25, Ch. 7, L. 1979.

Part 2

Confidential License Plates and Registrations

44-4-201. Authorization to issue confidential plates and registrations. The attorney general is authorized to issue to bona fide law enforcement agencies, except the highway patrol, within the state of Montana license plates and certificates of registration, which shall be exempt from all requirements for public disclosure. The issuance of such confidential registrations shall be subject to the provisions of this part.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(part).

44-4-202. Authority of attorney general to adopt rules. The attorney general may adopt rules necessary to implement the provisions of this part and to prevent the abuse or misuse of confidential registration plates.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(7).

44-4-203. Registration records. (1) The registration records of each vehicle so registered shall be maintained by the department of justice.

(2) The contents of such confidential registration records may be disclosed only at the discretion of the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(4), (5).

44-4-204. Applications for confidential plates and registrations. Applications by law enforcement agencies operating within the state must be made to the attorney general on a form and in a manner prescribed by the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(1).

44-4-205. Use of confidential plates and registrations. (1) Such license plates and registrations may be displayed and used only during and in the furtherance of official law enforcement investigations.

(2) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general.

History: **En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(2), (3).**

44-4-206. Revocation. Such registrations may be revoked at any time by the attorney general at his discretion. On delivery of notice of revocation, the registrant shall, within 24 hours, deliver such license plates and certificate of registration to the attorney general or his duly appointed agent.

History: **En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(6).**

Part 3

Board of Crime Control

44-4-301. Functions. As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall have the authority to establish minimum qualifying standards for employment of peace officers whose primary responsibility as authorized by law includes either the prevention and detection of crime or supervision of the enforcement of the penal, traffic, or fish and game laws of this state and its political subdivisions, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers, and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions of agencies, to insure the public health, welfare, and safety. The board may waive the minimum qualification standard for good cause shown.

History: **En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(4).**

CHAPTER 5

CRIMINAL JUSTICE INFORMATION

Part 1 — General Provisions

Section
44-5-101. Short title.
44-5-102. Purpose.
44-5-103. Definitions.
44-5-104. Relationship to other statutes.
44-5-105. Department of justice — powers.
Sections 44-5-106 through 44-5-110 reserved.
44-5-111. Court order to enforce compliance.
44-5-112. Sanctions.

Part 2 — Collection and Processing

44-5-201. Scope of authority to collect, process, and preserve criminal justice information.

44-5-202. Photographs and fingerprints.
Sections 44-5-203 through 44-5-210 reserved.
44-5-211. Records — form, contents, limits on use.
44-5-212. Record preservation.
44-5-213. Procedures to ensure accuracy of criminal history records.
44-5-214. Inspection or transfer of criminal history records.
44-5-215. Challenge and correction.

Part 3 — Dissemination

44-5-301. Dissemination of public criminal justice information.
44-5-302. Dissemination of criminal history record information that is not public criminal justice information.
44-5-303. Dissemination of confidential criminal justice information.
44-5-304. Development of statistical information — agreements as to access.
44-5-305. Dissemination of copied or inspected records.

Part 4 — System Security

44-5-401. Criminal justice information system security.
44-5-402. Automated equipment.
44-5-403. Computer programming.
44-5-404. Manual equipment.
44-5-405. Personnel.

Part 1

General Provisions

44-5-101. Short title. This chapter may be cited as the "Montana Criminal Justice Information Act of 1979".

History: En. Sec. 1, Ch. 525, L. 1979.

Compiler's Comments

Saving clause. Sec. 25, Ch. 525, L. 1979, provided: "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Severability. Sec. 26, Ch. 525, L. 1979, was a severability section.

44-5-102. Purpose. The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in criminal justice information recordkeeping.

History: En. Sec. 2, Ch. 525, L. 1979.

44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the division of motor vehicles, department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating

criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

History: **En. Sec. 3, Ch. 525, L. 1979.**

44-5-104. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by this chapter unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by this chapter, which applies only when information may be disclosed consistent with such laws.

History: **En. Sec. 4, Ch. 525, L. 1979.**

44-5-105. Department of justice — powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

History: **En. Sec. 23, Ch. 525, L. 1979.**

Compiler's Comments

Statement of Intent. The statement of intent attached to SB 271 (Ch. 525, L. 1979) provided in part: "Section 23(1) allows, but does not require, the department of justice to adopt rules necessary to carry out the purposes of the act. With the exception of section 9, discussed above, the legislature intends that this act be self-implementing. This grant of discretionary rulemaking authority is limited, therefore, to the adoption of: (1) rules establishing procedures and forms necessary for the efficient operation of a state repository of criminal history record information, (2) interpretive rules necessary to avoid constructions that would defeat the purposes of the act, listed in section 2, or (3) model procedural guidelines which other criminal justice agencies may or may not adopt for their own use."

44-5-106 through 44-5-110 reserved.

44-5-111. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of this chapter.

History: **En. Sec. 24, Ch. 525, L. 1979.**

44-5-112. Sanctions. The sanctions provided in 44-2-205 apply to any knowing or purposeful violation of this chapter.

History: **En. Sec. 22, Ch. 525, L. 1979.**

Part 2

Collection and Processing

44-5-201. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

History: En. Sec. 5, Ch. 525, L. 1979.

44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no charges were filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

History: **En. Sec. 6, Ch. 525, L. 1979.**

44-5-203 through 44-5-210 reserved.

44-5-211. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

History: **En. Sec. 7, Ch. 525, L. 1979.**

44-5-212. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

History: **En. Sec. 8, Ch. 525, L. 1979.**

44-5-213. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of institutions shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the

same purpose for the judicial branch of government if the supreme court consents to the rules.

History: **En. Sec. 9, Ch. 525, L. 1979.**

Compiler's Comments

Statement of Intent. The statement of intent attached to SB 271 (Ch. 525, L. 1979) provided in part:

"Section 9(7) requires the department of justice to adopt rules to implement that section, entitled 'Procedures To Ensure Accuracy Of Criminal History Records.' The section provides that the department of justice is required to maintain a centralized state repository of criminal history record information; that criminal justice agencies are required to report dispositions of criminal cases to that state repository; that, where time allows, criminal justice agencies are required to check their records against the state repository's to assure their completeness before disseminating them; and that criminal justice agencies are responsible for the completeness and accuracy of their own files. The intent of the legislature in granting rulemaking authority with respect to this provision is to require the state repository to establish uniform procedures for the reporting of dispositions to it. These rules should include clear-cut directives regarding the format and nature of the information to be reported. For example, the rules could require the uses of standard forms for reporting. Or, these rules could provide for a unique tracking number to facilitate the linking of dispositions to specific arrests."

44-5-214. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

History: **En. Sec. 19, Ch. 525, L. 1979.**

44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

History: **En. Sec. 20, Ch. 525, L. 1979.**

Part 3

Dissemination

44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

History: **En. Sec. 10, Ch. 525, L. 1979.**

44-5-302. Dissemination of criminal history record information that is not public criminal justice information. Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(1) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(2) a district court considers dissemination necessary;

(3) the information is disseminated in compliance with 44-5-304; or

(4) the agency receiving the information is authorized by law to receive it.

History: **En. Sec. 11, Ch. 525, L. 1979.**

44-5-303. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

History: **En. Sec. 12, Ch. 525, L. 1979.**

44-5-304. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with this chapter.

History: **En. Sec. 13, Ch. 525, L. 1979.**

44-5-305. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

History: **En. Sec. 21, Ch. 525, L. 1979.**

Part 4

System Security

44-5-401. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

History: **En. Sec. 14, Ch. 525, L. 1979.**

44-5-402. Automated equipment. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: **En. Sec. 15, Ch. 525, L. 1979.**

44-5-403. Computer programming. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

History: **En. Sec. 16, Ch. 525, L. 1979.**

44-5-404. Manual equipment. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

History: **En. Sec. 17, Ch. 525, L. 1979.**

44-5-405. Personnel. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: **En. Sec. 18, Ch. 525, L. 1979.**

CHAPTERS 6 THROUGH 9

RESERVED

CHAPTER 10

LAW ENFORCEMENT ACADEMY

Part 1 — General Provisions

Section

44-10-101. Short title.
44-10-102. Purpose.
44-10-103. Establishment of academy.

Part 2 — Government of Academy

44-10-201. Department of justice to govern academy.
44-10-202. Powers and duties of department.
44-10-203. Sessions to be determined annually.

Part 3 — Officers Who Attend Academy

44-10-301. Eligibility.

44-10-302. Retention of employment rights.
44-10-303. Expenditure of funds by local governments authorized.

Part 1

General Provisions

44-10-101. Short title. This chapter may be cited as the "Montana Law Enforcement Academy Act".

History: **En. Sec. 1, Ch. 7, L. 1959; R.C.M. 1947, 75-5201.**

44-10-102. Purpose. The purpose of this chapter shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers with a means of securing additional training in the field of law enforcement.

History: **En. Sec. 2, Ch. 7, L. 1959; R.C.M. 1947, 75-5202.**

44-10-103. Establishment of academy. There is hereby established a Montana law enforcement academy to be located at one of the units of the Montana university system, which unit shall be selected in the manner hereinafter provided.

History: **En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part).**

Part 2

Government of Academy

44-10-201. Department of justice to govern academy. The Montana law enforcement academy shall be governed by the department of justice.

History: **En. Sec. 5, Ch. 7, L. 1959; amd. Sec. 1, Ch. 28, L. 1961; amd. Sec. 1, Ch. 88, L. 1969; R.C.M. 1947, 75-5205.**

44-10-202. Powers and duties of department. The department of justice shall have the power and it shall be its duty to:

(1) choose a site for the Montana law enforcement academy at the unit of the university system of Montana which in the determination of the department is best suited for the needs of the academy;

(2) establish qualifications for admission to the academy;

(3) select from among the qualified applicants those officers who are to attend the academy each year;

(4) determine the curriculum and methods of training for the officers attending the academy;

(5) select and hire such staff as it deems necessary to implement this chapter;

(6) establish rules for the conduct of the officers at the academy;

(7) award appropriate certificates to the officers who successfully complete their training, which certificates shall be signed by the president of the selected university unit;

(8) provide for the keeping of permanent records of enrollment, attendance, and graduation and such other records as the department may deem necessary;

(9) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.

(10) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;

(11) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations.

History: En. Sec. 6, Ch. 7, L. 1959; amd. Sec. 2, Ch. 233, L. 1967; amd. Sec. 1, Ch. 331, L. 1971; R.C.M. 1947, 75-5206.

44-10-203. Sessions to be determined annually. The academy shall be in session for a period to be annually determined by the department of justice.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part).

Part 3

Officers Who Attend Academy

44-10-301. Eligibility. All bona fide Montana law enforcement officers shall be eligible to apply for admission to this academy.

History: En. Sec. 4, Ch. 7, L. 1959; R.C.M. 1947, 75-5204.

44-10-302. Retention of employment rights. All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority, or other rights by reason of attendance at the academy.

History: En. Sec. 7, Ch. 7, L. 1959; R.C.M. 1947, 75-5207.

44-10-303. Expenditure of funds by local governments authorized. The expenditure of funds by any city, town, municipality, or county for the board, room, and travel expenses of the officers attending the academy shall be a lawful expenditure.

History: En. Sec. 8, Ch. 7, L. 1959; amd. Sec. 3, Ch. 233, L. 1967; R.C.M. 1947, 75-5208.

CHAPTER 11

MUTUAL ASSISTANCE
RIGHTS OF ASSISTING OFFICERS

Part 1 — General Provisions

Section

44-11-101. Mutual assistance authorized — powers and duties of assisting officers.
44-11-102. Liability of assisted entity for obligation resulting from assistance.

Part 2 — Rights of Employment

44-11-201. Retention of rights of employment.
44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement.

Part 1

General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers. A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity.

History: En. 11-1851 by Sec. 1, Ch. 337, L. 1977; R.C.M. 1947, 11-1851.

44-11-102. Liability of assisted entity for obligation resulting from assistance. A law enforcement entity requesting assistance under 44-11-101 shall indemnify the assisting peace officer, his legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 2-9-305 that may result from the assistance furnished.

History: En. 11-1854 by Sec. 4, Ch. 337, L. 1977; R.C.M. 1947, 11-1854.

Part 2

Rights of Employment

44-11-201. Retention of rights of employment. A peace officer rendering assistance under 44-11-101 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for such service as for service rendered within the law enforcement entity in which he is normally employed.

History: En. 11-1852 by Sec. 2, Ch. 337, L. 1977; R.C.M. 1947, 11-1852.

44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement. (1) The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while they are rendering assistance.

(2) If it so requests, the law enforcement entity must be reimbursed by the law enforcement entity that requested the services for all payments made

for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract.

History: En. 11-1853 by Sec. 3, Ch. 337, L. 1977; R.C.M. 1947, 11-1853; amd. Sec. 26, Ch. 7, L. 1979.

CHAPTER 12

SEIZURES RELATED TO CONTROLLED SUBSTANCES

Part 1 — General Provisions

Section

44-12-101. Definition of controlled substance.
44-12-102. Things subject to forfeiture.
44-12-103. When property may be seized.
44-12-104. Summary forfeiture of certain controlled substances.

Part 2 — Procedure

44-12-201. Notice of seizure and intention to institute forfeiture proceedings.
44-12-202. Answer to allegations concerning use of property.
44-12-203. Procedure following answer or expiration of time for answering.
44-12-204. Proof required or permitted at hearing.
44-12-205. Disposition of property following hearing.
44-12-206. Disposition of proceeds of sale.

Part 1

General Provisions

44-12-101. Definition of controlled substance. As used in this chapter, "controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

History: En. Sec. 1, Ch. 529, L. 1979.

44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant; and

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9.

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana.

History: **En. Sec. 2, Ch. 529, L. 1979.**

44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9.

History: **En. Sec. 3, Ch. 529, L. 1979.**

Compiler's Comments

Commissioner correction. In subsection (2), a reference to "[section 1]" was changed to 44-12-102 by the Code Commissioner, 1979, to correct what appears to be a typographical error.

44-12-104. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of this chapter are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

History: **En. Sec. 4, Ch. 529, L. 1979.**

Part 2

Procedure

44-12-201. Notice of seizure and intention to institute forfeiture proceedings. A peace officer or an officer of the seizing agency who seizes any property other than controlled substances under the provisions of this chapter shall, within 45 days of the seizure, file a notice of the seizure and intention to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs, and the clerk shall serve notice thereof on all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose right, title, or interest is of record in the division of motor vehicles, by mailing a copy of the notice by certified or registered mail to the address on the records of the division;

(2) upon an owner or claimant whose name and address are known, by mailing a copy of the notice by certified or registered mail to his last-known address;

(3) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county.

History: **En. Sec. 5, Ch. 529, L. 1979.**

44-12-202. Answer to allegations concerning use of property. Within 20 days after the mailing or publication of the notice, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the notice of seizure and intention to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: **En. Sec. 6, Ch. 529, L. 1979.**

44-12-203. Procedure following answer or expiration of time for answering. (1) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court shall hear evidence on the charge of unlawful use of the property and upon motion may order the property forfeited to the state.

(2) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure.

History: **En. Sec. 7, Ch. 529, L. 1979.**

44-12-204. Proof required or permitted at hearing. (1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.

(2) A claimant of a security interest in the property may prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

History: **En. Sec. 8, Ch. 529, L. 1979.**

44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

History: **En. Sec. 9, Ch. 529, L. 1979.**

44-12-206. Disposition of proceeds of sale. Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(1) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(2) the remainder, if any, to the county treasurer of the county in which the property was seized, for deposit in the county general fund, except as provided in subsection (3);

(3) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer for deposit in the city or town general fund.

History: En. Sec. 10, Ch. 529, L. 1979.

TITLE 45

CRIMES

Ch.
1. General Preliminary Provisions.
2. General Principles of Liability.
3. Justifiable Use of Force.
4. Inchoate Offenses.
5. Offenses Against the Person.
6. Offenses Against Property.
7. Offenses Against Public Administration.
8. Offenses Against Public Order.
9. Dangerous Drugs.

CHAPTER 1

GENERAL PRELIMINARY PROVISIONS

Part 1 — Construction and Applicability

Section
45-1-101. Short title.
45-1-102. General purposes and principles of construction.
45-1-103. Application to offenses committed before and after enactment.
45-1-104. Other limitations on applicability.

Part 2 — Classification and Limitations

45-1-201. Classification of offenses.
Sections 45-1-202 through 45-1-204 reserved.
45-1-205. General time limitations.
45-1-206. Periods excluded from limitation.

Part 1

Construction and Applicability

45-1-101. Short title. This title shall be known and may be cited as the "Criminal Code of 1973".

History: En. 94-1-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-101.

45-1-102. General purposes and principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law that penal statutes are to be strictly construed has no application to this code. All its provisions are to be construed according to the fair import of their terms with a view to effect its object and to promote justice.

History: En. 94-1-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-102.

45-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code apply to any offense defined in this code and committed after January 1, 1974.

(2) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this title and Title 46 govern the construction of and punishment for any offense defined outside of this code and committed after January 1, 1974, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before January 1, 1974. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

History: En. 94-1-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 359, L. 1977; R.C.M. 1947, 94-1-103.

45-1-104. Other limitations on applicability. (1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered, and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

History: En. 94-1-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-104.

Part 2

Classification and Limitations

45-1-201. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section, and the sentence that may be imposed upon conviction thereof shall be governed by this title and Title 46.

History: En. 94-1-105 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 8, Ch. 359, L. 1977; R.C.M. 1947, 94-1-105.

45-1-202 through 45-1-204 reserved.

45-1-205. General time limitations. (1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

History: En. 94-1-106 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 359, L. 1977; R.C.M. 1947, 94-1-106.

45-1-206. Periods excluded from limitation. The period of limitation does not run during:

(1) any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state;

(2) any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) a prosecution pending against the offender for the same conduct, even if the indictment, complaint, or information which commences the prosecution is dismissed.

History: En. 94-1-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-107.

CHAPTER 2

GENERAL PRINCIPLES OF LIABILITY

Part 1 — Definitions and State of Mind

Section

45-2-101. General definitions.
45-2-102. Substitutes for negligence and knowledge.
45-2-103. General requirements of criminal act and mental state.
45-2-104. Absolute liability.

Part 2 — Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result.
45-2-202. Voluntary act.
45-2-203. Responsibility — intoxicated or drugged condition.
Sections 45-2-204 through 45-2-210 reserved.
45-2-211. Consent as a defense.
45-2-212. Compulsion.
45-2-213. Entrapment.

Part 3 — Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another.
45-2-302. When accountability exists.
45-2-303. Separate conviction of person accountable.
Sections 45-2-304 through 45-2-310 reserved.
45-2-311. Criminal responsibility of corporations.
45-2-312. Accountability for conduct of corporation.

Part 1

Definitions and State of Mind

45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(16) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(17) A "frisk" is a search by an external patting of a person's clothing.

(18) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(20) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(21) "Human being" means a person who has been born and is alive.

(22) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(23) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(24) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than ½ of 1% of alcohol by volume.

(25) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(26) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(27) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(28) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(29) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(30) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(31) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater

than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(32) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(33) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(34) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(35) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(36) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(37) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(38) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(39) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(40) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(41) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(42) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(43) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(44) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(45) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(46) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(47) "Premises" includes any type of structure or building and any real property.

(48) "Property" means anything of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement.

(49) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(50) "Public place" means any place to which the public or any substantial group thereof has access.

(51) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(52) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(53) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(54) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(55) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(56) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(57) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(58) "Statute" means any act of the legislature of this state.

(59) "Stolen property" means property over which control has been obtained by theft.

(60) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(61) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(62) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(63) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than $150 by the standards set forth in subsection (63)(a) above, its value shall be considered to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(64) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(65) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(66) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding.

History: En. 94-2-101 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 190, L. 1975; amd. Sec. 1, Ch. 405, L. 1975; amd. Sec. 1, Ch. 443, L. 1975; amd. Sec. 10, Ch. 359, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 94-2-101; amd. Sec. 1, Ch. 10, L. 1979.

45-2-102. Substitutes for negligence and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

History: En. 94-2-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-110.

45-2-103. General requirements of criminal act and mental state. (1) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections (27), (31), and (52) of 45-2-101. The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(2) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense.

History: En. 94-2-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 359, L. 1977; R.C.M. 1947, 94-2-103; amd. Sec. 1, Ch. 580, L. 1979.

45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (27), (31), and (52) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

History: En. 94-2-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 359, L. 1977; R.C.M. 1947, 94-2-104.

Part 2

Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result. (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense and the result is not within the risk of which the offender is aware or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

History: En. 94-2-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-105.

45-2-202. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing. Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his control.

History: En. 94-2-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-102.

45-2-203. Responsibility — intoxicated or drugged condition. A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

History: En. 94-2-109 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 53, Ch. 329, L. 1974; R.C.M. 1947, 94-2-109.

45-2-204 through 45-2-210 reserved.

45-2-211. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

History: En. 94-2-111 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 13, Ch. 359, L. 1977; R.C.M. 1947, 94-2-111.

45-2-212. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

History: En. 94-3-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-110.

45-2-213. Entrapment. A person is not guilty of an offense if his conduct is incited or induced by a public servant or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

History: En. 94-3-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-111.

Part 3

Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another. A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable for such conduct as provided in 45-2-302, or both.

History: En. 94-2-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-106.

45-2-302. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed, unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following:

(i) wholly deprives his prior efforts of effectiveness in such commission;

(ii) gives timely warning to the proper law enforcement authorities; or

(iii) otherwise makes proper effort to prevent the commission of the offense.

History: En. 94-2-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-107.

45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted.

History: En. 94-2-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-108.

45-2-304 through 45-2-310 reserved.

45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor and is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, or by another statute which clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

History: **En. 94-2-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-112.**

45-2-312. Accountability for conduct of corporation. (1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense although only a lesser or different punishment is authorized for the corporation.

History: **En. 94-2-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-113.**

CHAPTER 3

JUSTIFIABLE USE OF FORCE

Part 1 — When Force Justified

Section

45-3-101. Definitions.
45-3-102. Use of force in defense of person.
45-3-103. Use of force in defense of occupied structure.
45-3-104. Use of force in defense of other property.
45-3-105. Use of force by aggressor.
45-3-106. Use of force to prevent escape.
45-3-107. Use of force by parent, guardian, or teacher.
45-3-108. Use of force in resisting arrest.
45-3-109. Execution of death sentence.
Sections 45-3-110 through 45-3-114 reserved.
45-3-115. Affirmative defense.

Part 1

When Force Justified

45-3-101. Definitions. (1) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(2) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

History: En. 94-3-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-101.

45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

History: En. 94-3-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-102.

45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an assault upon or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

History: En. 94-3-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-103.

45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

History: En. 94-3-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-104.

45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

History: En. 94-3-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-105.

45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History: En. 94-3-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-106.

45-3-107. Use of force by parent, guardian, or teacher. A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice, or pupil.

History: En. 94-3-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-107.

45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

History: En. 94-3-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-108.

45-3-109. Execution of death sentence. A public servant who in the exercise of his official duty puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

History: En. 94-3-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-109.

45-3-110 through 45-3-114 reserved.

45-3-115. Affirmative defense. A defense of justifiable use of force based on the provisions of this part is an affirmative defense.

History: En. 94-3-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-112.

CHAPTER 4

INCHOATE OFFENSES

Part 1 — Enumeration of Offenses and Extent of Liability

Section
45-4-101. Solicitation.
45-4-102. Conspiracy.
45-4-103. Attempt.

Part 1

Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

History: En. 94-4-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-101.

45-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;
(b) has been convicted of a different offense;
(c) is not amenable to justice;
(d) has been acquitted; or
(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

History: En. 94-4-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-102.

45-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose,

he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

History: En. 94-4-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-103.

CHAPTER 5

OFFENSES AGAINST THE PERSON

Part 1 — Homicide

Section
45-5-101. Criminal homicide.
45-5-102. Deliberate homicide.
45-5-103. Mitigated deliberate homicide.
45-5-104. Negligent homicide.
45-5-105. Aiding or soliciting suicide.

Part 2 — Assault

45-5-201. Assault.
45-5-202. Aggravated assault.
45-5-203. Intimidation.
45-5-204. Mistreating prisoners.

Part 3 — Kidnapping

45-5-301. Unlawful restraint.
45-5-302. Kidnapping.
45-5-303. Aggravated kidnapping.
45-5-304. Custodial interference.

Part 4 — Robbery

45-5-401. Robbery.

Part 5 — Sexual Crimes

45-5-501. Definition.
45-5-502. Sexual assault.
45-5-503. Sexual intercourse without consent.
45-5-504. Indecent exposure.
45-5-505. Deviate sexual conduct.
45-5-506. Provisions generally applicable to sexual crimes.

Part 6 — Offenses Against the Family

45-5-601. Prostitution.
45-5-602. Promoting prostitution.
45-5-603. Aggravated promotion of prostitution.
45-5-604. Evidence in cases of promotion.
Sections 45-5-605 through 45-5-610 reserved.
45-5-611. Bigamy.
45-5-612. Marrying a bigamist.
45-5-613. Incest.
Sections 45-5-614 through 45-5-620 reserved.
45-5-621. Nonsupport.
45-5-622. Endangering the welfare of children.
45-5-623. Unlawful transactions with children.

45-5-624. Unlawful possession of an intoxicating substance by children.
45-5-625. Sexual abuse of children.

Part 1

Homicide

45-5-101. Criminal homicide. (1) A person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being.

(2) Criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.

History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-101.

45-5-102. Deliberate homicide. (1) Except as provided in 45-5-103(1), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 338, L. 1977; amd. Sec. 4, Ch. 584, L. 1977; R.C.M. 1947, 94-5-102; amd. Sec. 1, Ch. 322, L. 1979.

Compiler's Comments

Saving clause. Sec. 4, Ch. 322, L. 1979, provided: "This act applies only to offenses committed after the effective date of this act." The effective date was July 1, 1979.

45-5-103. Mitigated deliberate homicide. (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years, except as provided in 46-18-222.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 5, Ch. 584, L. 1977; R.C.M. 1947, 94-5-103.

45-5-104. Negligent homicide. (1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-5-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-104.

45-5-105. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur, commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-5-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-106.

Part 2

Assault

45-5-201. Assault. (1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be imprisoned in the state prison for a term not to exceed 5 years.

History: En. 94-5-201 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-201; amd. Sec. 1, Ch. 261, L. 1979.

45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another;

(b) bodily injury to another with a weapon;

(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 46-18-222.

History: En. 94-5-202 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 6, Ch. 584, L. 1977; R.C.M. 1947, 94-5-202.

45-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of an offense;

(e) expose any person to hatred, contempt, or ridicule; or

(f) take action as a public official against anyone or anything, withhold official action, or cause such action or withholding.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-5-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-203.

45-5-204. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner;

(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and imprisoned in the state prison for a term not to exceed 10 years.

History: En. 94-8-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-113.

Part 3

Kidnapping

45-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-301.

45-5-302. Kidnapping. (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years, except as provided in 46-18-222.

History: En. 94-5-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 584, L. 1977; R.C.M. 1947, 94-5-302.

45-5-303. Aggravated kidnapping. (1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a

HAROLD H. HARRISON
ATTORNEY AT LAW

place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-222, a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years, unless he has voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years.

History: En. 94-5-303 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 338, L. 1977; amd. Sec. 8, Ch. 584, L. 1977; R.C.M. 1947, 94-5-303.

45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years.

(3) A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment. A person who has left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arrest.

History: En. 94-5-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-305; amd. Sec. 1, Ch. 274, L. 1979.

Part 4

Robbery

45-5-401. Robbery. (1) A person commits the offense of robbery if in the course of committing a theft he:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years, except as provided in 46-18-222.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission.

History: En. 94-5-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 584, L. 1977; R.C.M. 1947, 94-5-401.

Part 5

Sexual Crimes

45-5-501. Definition. As used in 45-5-503 and 45-5-505, the term "without consent" means:

(1) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

(2) the victim is incapable of consent because he is:

(a) mentally defective or incapacitated;

(b) physically helpless; or

(c) less than 16 years old.

History: En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501.

45-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed 20 years.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979.

45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 46-18-222.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years, except as provided in 46-18-222.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) evidence of the victim's past sexual conduct with the offender;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(6) If the defendant proposes for any purpose to offer evidence described in subsection (5)(a) or (5)(b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (5).

(7) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503.

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) A person convicted of the offense of indecent exposure shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years.

(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-505.

45-5-506. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979.

Part 6

Offenses Against the Family

45-5-601. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975; R.C.M. 1947, 94-5-602.

45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits a person to patronize a prostitute;

(e) procures a prostitute for a patron;

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) A person convicted of promoting prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part).

45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not he is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support he is responsible.

(2) A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed 20 years.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part).

45-5-604. Evidence in cases of promotion. (1) On the issue whether a place is a house of prostitution, the following, in addition to all other admissible evidence, shall be admissible:

(a) its general repute;

(b) the repute of the persons who reside in or frequent the place; or

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against his spouse shall be admissible under 45-5-602, 45-5-603, and this section.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(4).

45-5-605 through 45-5-610 reserved.

45-5-611. Bigamy. (1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead;

(b) the offender and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the offender to be alive;

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-604 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-604.

45-5-612. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed $500 or be imprisoned in the county jail for any period not to exceed 6 months, or both.

History: En. 94-5-605 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-605.

45-5-613. Incest. (1) A person commits the offense of incest if he knowingly marries or cohabits or has sexual intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood. The relationships referred to herein include blood relationships without regard to legitimacy and relationships of parent and child by adoption.

(2) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-606.

45-5-614 through 45-5-620 reserved.

45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support; or

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of aggravated nonsupport shall be imprisoned in the state prison for any term not to exceed 10 years.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support.

History: En. 94-5-608 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 19, Ch. 359, L. 1977; R.C.M. 1947, 94-5-608.

45-5-622. Endangering the welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than 16 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) A parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than 16 years old by:

(a) supplying or encouraging the use of intoxicating substances by the child; or

(b) assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian;

(ii) enter a place of prostitution; or

(iii) engage in sexual conduct.

(3) A person convicted of endangering the welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed $1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

History: En. 94-5-607 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 85, L. 1975; amd. Sec. 1, Ch. 218, L. 1977; amd. Sec. 18, Ch. 359, L. 1977; R.C.M. 1947, 94-5-607.

45-5-623. Unlawful transactions with children. (1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives alcoholic beverages to a person under 19 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-609 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-609; amd. Sec. 2, Ref. 74, app. Nov. 7, 1978.

Compiler's Comments

Effective date. Amendment proposed by Referendum 74 (Ch. 264, L. 1977) and approved at the general election held Nov. 7, 1978, was effective Jan. 1, 1979.

45-5-624. Unlawful possession of an intoxicating substance by children. (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall be fined not to exceed $50 or be imprisoned in the county jail for any term not to exceed 10 days, or both. If proceedings are held in the youth court, the preceding penalty does not apply, and the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103(13). In such case, the youth court may enter its judgment under 41-5-523.

History: En. 94-5-610 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 87, L. 1974; amd. Sec. 1, Ch. 536, L. 1977; R.C.M. 1947, 94-5-610; amd. Sec. 3, Ref. 74, app. Nov. 7, 1978.

Compiler's Comments

Effective date. Amendment proposed by Referendum 74 (Ch. 264, L. 1977) and approved at the general election held Nov. 7, 1978, was effective Jan. 1, 1979.

45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if he knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual contact, actual or simulated;

(b) photographs, films, videotapes, or records a child engaging in sexual contact, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual contact, actual or simulated, for use as designated in (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual contact, actual or simulated; or

(e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.

(2) A person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(3) For the purposes of this section, "child" means any person less than 16 years old.

History: En. Sec. 1, Ch. 505, L. 1979.

Compiler's Comments

Codification. Sec. 2, Ch. 505, L. 1979, provided: "Section 1 is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions contained in Title 45 apply to section 1."

CHAPTER 6

OFFENSES AGAINST PROPERTY

Part 1 — Criminal Mischief and Arson

Section
45-6-101. Criminal mischief.
45-6-102. Negligent arson.
45-6-103. Arson.

Part 2 — Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully".
45-6-202. Criminal trespass to vehicles.
45-6-203. Criminal trespass to property.
45-6-204. Burglary.
45-6-205. Possession of burglary tools.

Part 3 — Theft and Related Offenses

45-6-301. Theft.
45-6-302. Theft of lost or mislaid property.
45-6-303. Offender's interest in the property.
45-6-304. Effect of possession of stolen property.
45-6-305. Theft of labor or services or use of property.
45-6-306. Obtaining communication services with intent to defraud.
45-6-307. Aiding the avoidance of telecommunications charges.
45-6-308. Unauthorized use of motor vehicles.
Sections 45-6-309 through 45-6-314 reserved.
45-6-315. Defrauding creditors.
45-6-316. Issuing a bad check.
45-6-317. Deceptive practices.
45-6-318. Deceptive business practices.
45-6-319. Chain distributor schemes.
Sections 45-6-320 through 45-6-324 reserved.
45-6-325. Forgery.

45-6-326. Obscuring the identity of a machine.
45-6-327. Illegal branding or altering or obscuring a brand.

Part 1

Criminal Mischief and Arson

45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $150, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-6-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 88, L. 1975; R.C.M. 1947, 94-6-102.

45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, he shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-6-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-103.

45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure which is property of another without consent; or

(b) places another person in danger of death or bodily injury.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed 20 years.

History: En. 94-6-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 261, L. 1975; R.C.M. 1947, 94-6-104.

Part 2

Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully". (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person or unless such notice is given by posting in a conspicuous manner.

(2) In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

History: En. 94-6-201 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 21, Ch. 359, L. 1977; R.C.M. 1947, 94-6-201.

45-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-202.

45-6-203. Criminal trespass to property. (1) A person commits the offense of criminal trespass to property if he knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-203.

45-6-204. Burglary. (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit a felony therein and:

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 10 years. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years.

History: En. 94-6-204 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 260, L. 1975; R.C.M. 1947, 94-6-204.

45-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or explosive suitable for breaking into an occupied structure or vehicle or any depository designed for the safekeeping of property or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-205.

Part 3

Theft and Related Offenses

45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance, as defined in 53-3-101, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person convicted of the offense of theft of property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding $150 in value or theft of any commonly domesticated hoofed animal shall be imprisoned in the state prison for any term not to exceed 10 years.

(6) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

History: En. 94-6-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 22, Ch. 359, L. 1977; R.C.M. 1947, 94-6-302; amd. Sec. 1, Ch. 374, L. 1979.

45-6-302. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed $500 or be imprisoned in the county jail for a period not to exceed 6 months.

History: En. 94-6-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-303.

45-6-303. Offender's interest in the property. (1) It is no defense to a charge of theft of property that the offender has an interest therein when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses is theft only if it occurs after the parties have ceased living together.

History: En. 94-6-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-306.

45-6-304. Effect of possession of stolen property. Possession of stolen property shall not constitute proof of the commission of the offense of theft. Such fact shall place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all other evidence pointing to his guilt.

History: En. 94-6-314 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-314.

45-6-305. Theft of labor or services or use of property. (1) A person commits the offense of theft when he obtains the temporary use of property, labor, or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-304.

45-6-306. Obtaining communication services with intent to defraud. In a prosecution under 45-6-305 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

(1) by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(2) by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, or electronically;

(3) by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(4) by making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence, place of origin, or destination of any telecommunications.

History: En. 94-6-304.1 by Sec. 1, Ch. 156, L. 1974; amd. Sec. 1, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.1.

45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges; or

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

History: En. 94-6-304.2 by Sec. 2, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.2; amd. Sec. 1, Ch. 282, L. 1979.

45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had he known of it.

History: En. 94-6-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-305.

45-6-309 through 45-6-314 reserved.

45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code (30-1-201(37)).

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value therefrom may be prosecuted under 45-6-301.

History: En. 94-6-313 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 367, L. 1975; R.C.M. 1947, 94-6-313.

45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when, with the purpose of obtaining control over property or to secure property, labor, or services of another, he issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds $150, he shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-6-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-309.

45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds $150, the offender shall be imprisoned in the state prison for a term not to exceed 10 years.

History: **En. 94-6-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 23, Ch. 359, L. 1977; R.C.M. 1947, 94-6-307.**

45-6-318. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure;

(d) sells, offers, or exposes for sale adulterated commodities;

(e) sells, offers, or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage; or

(b) represented as being another person's produce though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: **En. 94-6-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-308.**

45-6-319. Chain distributor schemes. (1) As used in this section, the following definitions apply:

(a) "Person" means a natural person, corporation, partnership, trust, or other entity; and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity.

(b) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year or fined not to exceed $1,000, or both.

(4) Any person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or fined not to exceed $5,000, or both.

History: En. Secs. 1 to 3, Ch. 465, L. 1973; amd. Sec. 24, Ch. 359, L. 1977; R.C.M. 1947, 94-6-308.1.

45-6-320 through 45-6-324 reserved.

45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds $150, the offender shall be imprisoned in the state prison for any term not to exceed 20 years.

History: En. 94-6-310 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-310.

45-6-326. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

History: En. 94-6-311 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 167, L. 1977; R.C.M. 1947, 94-6-311.

45-6-327. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-6-312 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-312.

CHAPTER 7

OFFENSES AGAINST PUBLIC ADMINISTRATION

Part 1 — Bribery and Corrupt Influence

Section

45-7-101. Bribery in official and political matters.
45-7-102. Threats and other improper influence in official and political matters.
45-7-103. Compensation for past official behavior.
45-7-104. Gifts to public servants by persons subject to their jurisdiction.

Part 2 — Perjury and Other Falsification in Official Matters

45-7-201. Perjury.
45-7-202. False swearing.
45-7-203. Unsworn falsification to authorities.
45-7-204. False alarms to agencies of public safety.
45-7-205. False reports to law enforcement authorities.
45-7-206. Tampering with witnesses and informants.
45-7-207. Tampering with or fabricating physical evidence.
45-7-208. Tampering with public records or information.
45-7-209. Impersonating a public servant.

Part 3 — Obstructing Governmental Operations

45-7-301. Resisting arrest.
45-7-302. Obstructing a peace officer or other public servant.

45-7-303. Obstructing justice.
45-7-304. Failure to aid a peace officer.
45-7-305. Compounding a felony.
45-7-306. Escape.
45-7-307. Transferring illegal articles or unauthorized communication.
45-7-308. Bail-jumping.
45-7-309. Criminal contempt.

Part 4 — Official Misconduct

45-7-401. Official misconduct.

Part 1

Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years and shall forever be disqualified from holding any public office in this state.

History: En. 94-7-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-102.

45-7-102. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty;

(d) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law; or

(e) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) It is no defense to prosecution under subsections (1)(a) through (1)(d) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-7-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 25, Ch. 359, L. 1977; R.C.M. 1947, 94-7-103.

45-7-103. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 26, Ch. 359, L. 1977; R.C.M. 1947, 94-7-104.

45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be

interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) This section shall not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-105.

Part 2

Perjury and Other Falsification in Official Matters

45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not

be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

History: En. 94-7-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-202.

45-7-202. False swearing. (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing his official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) to (7) of 45-7-201 apply to this section.

(3) A person convicted of false swearing shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-203.

45-7-203. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading;

(c) submits or invites reliance on any writing which he knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-204 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-204.

45-7-204. False alarms to agencies of public safety. (1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-205.

45-7-205. False reports to law enforcement authorities. (1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-206 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-206.

45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or thing;

(c) elude legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-7-207 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 27, Ch. 359, L. 1977; R.C.M. 1947, 94-7-207.

45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years.

History: En. 94-7-208 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-208.

45-7-208. Tampering with public records or information. (1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or enactment, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept by others for information of the government;

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a); or

(c) purposely destroys, conceals, removes, or otherwise impairs the verity or availability of any such record, document, or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed 10 years.

History: En. 94-7-209 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-209.

45-7-209. Impersonating a public servant. (1) A person commits the offense of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-210 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-210.

Part 3

Obstructing Governmental Operations

45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-301.

45-7-302. Obstructing a peace officer or other public servant. (1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-302 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-302.

45-7-303. Obstructing justice. (1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from such official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed 10 years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offender has been or is liable to be charged with a misdemeanor.

History: En. 94-7-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-303.

45-7-304. Failure to aid a peace officer. (1) A peace officer may order a person to cooperate where it is reasonable for the peace officer to enlist the cooperation of such person in:

(a) effectuating or securing an arrest of another pursuant to 46-6-402; or

(b) preventing the commission by another of an offense.

(2) A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(3) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-304.

45-7-305. Compounding a felony. (1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-305.

45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, or city jail by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, or city jail; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection.

History: En. 94-7-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-306.

45-7-307. Transferring illegal articles or unauthorized communication. (1) (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed 20 years, if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) Subsection (1)(b)(ii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both.

History: En. 94-7-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 28, Ch. 359, L. 1977; R.C.M. 1947, 94-7-307.

45-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed 10 years. In all other cases he shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-308.

45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-309.

Part 4

Official Misconduct

45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his official capacity which he knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

History: En. 94-7-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 474, L. 1975; R.C.M. 1947, 94-7-401.

CHAPTER 8

OFFENSES AGAINST PUBLIC ORDER

Part 1 — Conduct Disruptive of Public Order

Section
45-8-101. Disorderly conduct.
45-8-102. Failure of disorderly persons to disperse.
45-8-103. Riot.
45-8-104. Incitement to riot.
45-8-105. Criminal syndicalism.
45-8-106. Bringing armed men into the state.
Sections 45-8-107 through 45-8-110 reserved.
45-8-111. Public nuisance.
45-8-112. Action to abate a public nuisance.
45-8-113. Creating a hazard.
45-8-114. Failure to yield party line.

Part 2 — Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity.
45-8-202. Public display of offensive material.
45-8-203. Certain motion picture theater employees not liable for prosecution.
45-8-204. Sale and advertisement of contraceptive drugs and devices.
Sections 45-8-205 through 45-8-210 reserved.
45-8-211. Cruelty to animals.
45-8-212. Criminal defamation.
45-8-213. Privacy in communications.
45-8-214. Bribery in contests.
45-8-215. Desecration of flags.

Part 3 — Weapons

45-8-301. Uniformity of interpretation.
45-8-302. Definitions.
45-8-303. Possession or use of machine gun in connection with a crime.
45-8-304. Possession or use of machine gun for offensive purpose.

45-8-305. Presumption of offensive or aggressive purpose.
45-8-306. Presence of gun as evidence of possession or use.
45-8-307. Exceptions.
45-8-308. Manufacturer's register of machine guns.
45-8-309. Registration of machine guns — presumption from failure to register.
Sections 45-8-310 through 45-8-314 reserved.
45-8-315. Definition.
45-8-316. Carrying concealed weapons.
45-8-317. Exceptions.
45-8-318. Possession of deadly weapon by prisoner.
45-8-319. Permits to carry concealed weapons — records — revocation.
45-8-320. Repealed. Sec. 1, Ch. 312, L. 1979.
Sections 45-8-321 through 45-8-330 reserved.
45-8-331. Switchblade knives.
45-8-332. Definitions.
45-8-333. Reckless or malicious use of explosives.
45-8-334. Possession of a destructive device.
45-8-335. Possession of explosives.
45-8-336. Possession of a silencer.
45-8-337. Possession prima facie evidence of unlawful purpose.
Sections 45-8-338 through 45-8-340 reserved.
45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident.
45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state.
45-8-343. Firing firearms.
45-8-344. Use of firearms by children under fourteen prohibited.
45-8-345. Criminal liability of parent or guardian — prosecution.

Part 1

Conduct Disruptive of Public Order

45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire, impending explosion, or other catastrophe in such a place that its occurrence would endanger human life; or

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(2) A person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101.

45-8-102. Failure of disorderly persons to disperse. (1) Where two or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-102.

45-8-103. Riot. (1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) A person convicted of the offense of riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-103.

45-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas or expression of belief which advocacy or expression does not urge the commission of an act of immediate violence.

(2) A person convicted of the offense of incitement to riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-104.

45-8-105. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime, malicious damage or injury to property, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism;

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed 10 years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 29, Ch. 359, L. 1977; R.C.M. 1947, 94-7-503.

45-8-106. Bringing armed men into the state. (1) A person commits the offense of bringing armed men into the state when he knowingly brings or aids in bringing into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed 10 years.

History: En. 94-7-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-504.

45-8-107 through 45-8-110 reserved.

45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(1) thru (4).

45-8-112. Action to abate a public nuisance. (1) Every public nuisance may be abated and the persons maintaining such nuisance and the possessor of the premises who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(2) Upon the filing of the complaint in such action, the judge may issue a temporary injunction.

(3) In such action evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance.

(4) If the existence of the nuisance is established, an order of abatement shall be entered as part of the judgment in the case. The judge issuing the order may, in his discretion:

(a) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(b) close the premises for any period not to exceed 1 year, during which period the premises shall remain in the custody of the court;

(c) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond shall be as provided in 46-9-502 and 46-9-503; or

(d) any combination of the above.

History: **En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(5).**

45-8-113. Creating a hazard. (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 ½ cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler which is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: **En. 94-8-108 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 31, Ch. 359, L. 1977; R.C.M. 1947, 94-8-108.**

45-8-114. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department or for medical aid or ambulance service shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call, knowing such pretext to be false, shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(4) Every telephone company doing business in this state shall print a copy of subsections (1), (2), and (3) of this section in each telephone directory published by it after January 1, 1974.

History: En. 94-8-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-109.

Part 2

Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in (2)(a)(i), (ii), or (iii) of this section in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of this section and 45-8-202.

History: En. 94-8-110 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 407, L. 1975; R.C.M. 1947, 94-8-110; amd. Sec. 1, I.M. 79, app. Nov. 7, 1978.

Compiler's Comments

Effective date. Amendments proposed by Initiative 79 approved at the general election held November 7, 1978, were effective January 1, 1979.

45-8-202. Public display of offensive material. (1) A person is guilty of public display of offensive sexual material when:

(a) with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, marquee, or similar place any pictorial, three-dimensional, or other visual representation of a person or a portion of the human body that predominantly appeals to prurient interest in sex, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors; and

(b) he does not:

(i) separate that material by an opaque structure from other materials displayed; and

(ii) establish by official identification that each person viewing the displayed material is at least 18 years of age.

(2) A theater may not display previews or projections advertising or promoting motion pictures if such previews or projections contain a display of offensive sexual or offensive violent material and if minors are permitted to attend the showing of the motion picture then being featured.

(3) A drive-in movie screen may not display any material prohibited by subsection (1) in such manner that the display is easily visible from any public street, sidewalk, thoroughfare, or transportation facility.

(4) A person convicted of the public display of offensive sexual material or convicted of otherwise violating this section shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) For purposes of this section, "offensive violent material" means material which is so violent as to be patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

History: En. Secs. 1 to 3, Ch. 463, L. 1973; amd. Sec. 2, Ch. 407, L. 1975; amd. Sec. 1, Ch. 391, L. 1977; R.C.M. 1947, 94-8-110.1.

45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and 45-8-202 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

History: En. 94-8-110.3 by Sec. 1, Ch. 76, L. 1974; R.C.M. 1947, 94-8-110.3.

45-8-204. Sale and advertisement of contraceptive drugs and devices. (1) It is unlawful for any person, firm, corporation, partnership, or association to sell, offer for sale, or give away, by means of vending machines, personal or collective distribution, solicitation, or peddling or in any other manner whatsoever, contraceptive drugs or devices, prophylactic rubber goods, or other articles for the prevention of venereal diseases. This subsection does not apply to regularly licensed practitioners of medicine or osteopathy, other licensed persons practicing other healing arts, registered pharmacists, or wholesale drug jobbers or manufacturers who sell to retail stores only.

(2) It is unlawful to:

(a) exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place other than in the place of business of a licensed pharmacist;

(b) advertise such in any magazine, newspaper, or other form of publication originating in or published within the state of Montana;

(c) publish or distribute from house to house or upon the streets any circular, booklet, or other form of advertising of prophylactics or contraceptives; or

(d) advertise such by other visual means, auditory method, or radio broadcast or by the use of outside signs on stores, billboards, window displays, or other advertising visible to persons upon the streets or public highways.

(3) Nothing in this section prevents the advertising of prophylactics or contraceptives in the trade press, those magazines whose principal circulation is to the medical and pharmaceutical professions, or those magazines and other publications having interstate circulation or originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation.

(4) Nothing in this section prevents the furnishing within the store or place of business of a licensed pharmacist to persons qualified to purchase, and then only upon their inquiry, such printed or other information as is requisite to proper use in relation to any merchandise coming within the provisions of this section.

(5) Nothing in this section prevents the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this section.

(6) Any officer of the law may cause the arrest of a person violating any provision of this section, seize stocks illegally held, and seize any mechanical device or vending machine containing any merchandise coming within the provisions of this section, holding the owner of the machine and the occupier

and owner of the premises where seizure is made to be in violation of this section.

(7) Any person, any member of a firm or partnership, or the officers of a corporation or association who knowingly violate any of the provisions of this section are guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed $500 or by imprisonment not to exceed 6 months in the county jail, or both.

(8) Justice of the peace courts and the district courts of the state have concurrent jurisdiction in all prosecutions and causes arising under this section.

History: En. Secs. 1 to 4, Ch. 430, L. 1973; amd. Sec. 32, Ch. 359, L. 1977; R.C.M. 1947, 94-8-110.2.

45-8-205 through 45-8-210 reserved.

45-8-211. Cruelty to animals. (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying any animal in a cruel manner;

(c) failing to provide an animal in his custody with proper food, drink, or shelter;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in a horse race of more than 2 miles or promoting, sponsoring, conducting, or participating in any fight between any animals.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-106.

45-8-212. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to his or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

History: En. 94-8-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-111.

45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-114 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 33, Ch. 359, L. 1977; R.C.M. 1947, 94-8-114; amd. Sec. 1, Ch. 356, L. 1979.

45-8-214. Bribery in contests. (1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-8-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-112.

45-8-215. Desecration of flags. (1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag;

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered;

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed 10 years.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

History: En. 94-7-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-502.

Part 3

Weapons

45-8-301. Uniformity of interpretation. Sections 45-8-302 through 45-8-309 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 11, Ch. 43, L. 1935; re-en. Sec. 11317.10, R.C.M. 1935; Sec. 94-3110, R.C.M. 1947; redes. 94-8-209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-209.

45-8-302. Definitions. In 45-8-303 through 45-8-309 the following definitions apply:

(1) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device.

(2) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: any forcible felony, robbery, burglary, and criminal trespass.

(3) "Person" includes a firm, partnership, association, or corporation.

History: En. Sec. 1, Ch. 43, L. 1935; re-en. Sec. 11317.1, R.C.M. 1935; Sec. 94-3101, R.C.M. 1947; redes. 94-8-201 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 34, Ch. 359, L. 1977; R.C.M. 1947, 94-8-201.

45-8-303. Possession or use of machine gun in connection with a crime. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 20 years.

History: En. Sec. 2, Ch. 43, L. 1935; re-en. 11317.2, R.C.M. 1935; Sec. 94-3102, R.C.M. 1947; redes. 94-8-202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-202.

45-8-304. Possession or use of machine gun for offensive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 10 years.

History: En. Sec. 3, Ch. 43, L. 1935; re-en. Sec. 11317.3, R.C.M. 1935; Sec. 94-3103, R.C.M. 1947; redes. 94-8-203 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-203.

45-8-305. Presumption of offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions;

(3) when the machine gun is of the kind described in 45-8-309 and has not been registered as required in that section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

History: En. Sec. 4, Ch. 43, L. 1935; re-en. Sec. 11317.4, R.C.M. 1935; Sec. 94-3104, R.C.M. 1947; amd. and redes. 94-8-204 by Sec. 26, Ch. 513, L. 1973; amd. Sec. 35, Ch. 359, L. 1977; R.C.M. 1947, 94-8-204.

45-8-306. Presence of gun as evidence of possession or use. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

History: En. Sec. 5, Ch. 43, L. 1935; re-en. Sec. 11317.5, R.C.M. 1935; Sec. 94-3105, R.C.M. 1947; redes. 94-8-205 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-205.

45-8-307. Exceptions. Nothing contained in 45-8-301 through 45-8-309 shall prohibit or interfere with:

(1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof or the transportation required for that purpose;

(2) the possession of a machine gun for scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) the possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber for a purpose manifestly not aggressive or offensive.

History: En. Sec. 6, Ch. 43, L. 1935; re-en. Sec. 11317.6, R.C.M. 1935; Sec. 94-3106, R.C.M. 1947; redes. 94-8-206 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-206.

45-8-308. Manufacturer's register of machine guns. (1) Every manufacturer shall keep a register of all machine guns manufactured or handled by him.

(2) This register shall show, for every machine gun:

(a) the model and serial number;

(b) the date of manufacture, sale, loan, gift, delivery, or receipt;

(c) the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered or from whom it was received; and

(d) the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered or from whom received.

(3) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his entire stock of machine guns, parts, and supplies therefor and shall produce the register herein required for inspection.

(4) A violation of any provision of this section shall be punishable by a fine of not less than $100.

History: En. Sec. 7, Ch. 43, L. 1935; re-en. Sec. 11317.7, R.C.M. 1935; Sec. 94-3107, R.C.M. 1947; redes. 94-8-207 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-207.

45-8-309. Registration of machine guns — presumption from failure to register. (1) Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered with the department of justice annually on February 20. If acquired hereafter it shall be registered within 24 hours after its acquisition.

(2) Blanks for registration shall be prepared by the department and furnished upon application.

(3) To comply with this section the application as filed must show the model and serial number of the gun, the name, address, and occupation of the person in possession, and from whom and the purpose for which the gun was acquired.

(4) The registration data shall not be subject to inspection by the public.

(5) Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose.

History: En. Sec. 8, Ch. 43, L. 1935; re-en. Sec. 11317.8, R.C.M. 1935; Sec. 94-3108, R.C.M. 1947; redes. 94-8-208 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-208.

45-8-310 through 45-8-314 reserved.

45-8-315. Definition. "Concealed weapon" shall mean any weapon mentioned in 45-8-316 through 45-8-319 which shall be wholly or partially covered by the clothing or wearing apparel of the person so carrying or bearing the weapon.

History: En. Sec. 6, Ch. 74, L. 1919; re-en. Sec. 11307, R.C.M. 1921; re-en. Sec. 11307, R.C.M. 1935; Sec. 94-3530, R.C.M. 1947; redes. 94-8-215 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-215.

45-8-316. Carrying concealed weapons. (1) Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his person any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both.

History: **En. Sec. 1, Ch. 74, L. 1919; re-en. Sec. 11302, R.C.M. 1921; re-en. Sec. 11302, R.C.M. 1935; Sec. 94-3525, R.C.M. 1947; redes. 94-8-210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 36, Ch. 359, L. 1977; amd. Sec. 1, Ch. 411, L. 1977; R.C.M. 1947, 94-8-210.**

45-8-317. Exceptions. Section 45-8-316 does not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a person authorized by a judge of a district court of this state to carry a weapon; or

(7) the carrying of arms on one's own premises or at one's home or place of business.

History: **En. Sec. 3, Ch. 74, L. 1919; re-en. Sec. 11304, R.C.M. 1921; re-en. Sec. 11304, R.C.M. 1935; Sec. 94-3527, R.C.M. 1947; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971; redes. 94-8-212 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 37, Ch. 359, L. 1977; R.C.M. 1947, 94-8-212.**

45-8-318. Possession of deadly weapon by prisoner. (1) Every prisoner committed to the Montana state prison who, while at such state prison, while being conveyed to or from the Montana state prison, while at a state prison farm or ranch, while being conveyed to or from any such place, or while under the custody of prison officials, officers, or employees, possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a felony.

(2) He shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, such term of imprisonment to commence from the time he would otherwise have been released from said prison.

History: **En. Sec. 1, Ch. 131, L. 1961; Sec. 94-3527.1, R.C.M. 1947; redes. 94-8-213 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-213.**

45-8-319. Permits to carry concealed weapons — records — revocation. (1) Any judge of a district court of this state may grant permission to carry or bear, concealed or otherwise, a pistol or revolver for a term not exceeding 1 year.

(2) All applications for such permission must be made by petition filed with the clerk of the district court. No charge may be made for the filing of the petition.

(3) The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral character and peaceable disposition.

(4) No such permission shall be granted any person who is not a citizen of the United States and who has not been an actual bona fide resident of the state of Montana for 6 months immediately next preceding the date of such application.

(5) A record of permission granted shall be kept by the clerk of the court. The record shall state the date of the application, the date of the permission, the name of the person to whom permission is granted, the name of the judge granting the permission, and the name of the person, if any, by whom good moral character and peaceable disposition are proved. The record must be signed by the person who is granted such permission.

(6) The clerk shall thereupon issue under his hand and the seal of the court a certificate, in a convenient card form so that the same may be carried in the pocket, stating:

"Permission to .... authorizing him to carry or bear, concealed or otherwise, a pistol or revolver for the period of .... from the date hereof has been granted by ...., a judge of the district court of the .... judicial district of the state of Montana, in and for the county of .....

Witness the hand of the clerk and the seal of said court this .... day of ...., 19...

......
Clerk"

(7) The date of the certificate shall be the date of the granting of such permission. The certificate shall bear upon its face the signature of the person receiving the same.

(8) Upon good cause shown the judge granting such permission may, in his discretion without notice to the person receiving such permission, revoke the same. The date of the revocation shall be noted by the clerk upon the record kept by him.

(9) All permissions to carry or bear concealed weapons granted before March 3, 1919, are hereby revoked.

History: En. Sec. 5, Ch. 74, L. 1919; re-en. Sec. 11306, R.C.M. 1921; re-en. Sec. 11306, R.C.M. 1935; Sec. 94-3529, R.C.M. 1947; redes. 94-8-214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 38, Ch. 359, L. 1977; R.C.M. 1947, 94-8-214.

45-8-320. Repealed. Sec. 1, Ch. 312, L. 1979.

45-8-321 through 45-8-330 reserved.

45-8-331. Switchblade knives. (1) Every person who carries or bears upon his person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding $500 or by imprisonment in the county jail for a period not exceeding 6 months or by both such fine and imprisonment.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which said collection is located is hereby exempted from the provisions of this section.

(3) For the purpose of this section a switchblade knife is defined as any knife which has a blade 1 ½ inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R.C.M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-226.

45-8-332. Definitions. (1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in 50-38-101.

History: En. Sec. 1, Ch. 304, L. 1971; Sec. 69-1931, R.C.M. 1947; amd. and redes. 94-8-209.1 by Sec. 72, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.1.

45-8-333. Reckless or malicious use of explosives. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a misdemeanor.

History: En. Sec. 713, Pen. C. 1895; re-en. Sec. 8551, Rev. C. 1907; re-en. Sec. 2812, R.C.M. 1921; re-en. Sec. 2812, R.C.M. 1935; R.C.M. 1947, 69-1927.

45-8-334. Possession of a destructive device. (1) A person who, with the purpose to commit a felony, has in his possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years.

History: En. Sec. 2, Ch. 304, L. 1971; Sec. 69-1932, R.C.M. 1947; amd. and redes. 94-8-209.2 by Sec. 73, Ch. 359, L. 1977; R.C.M 1947, 94-8-209.2.

45-8-335. Possession of explosives. (1) A person commits the offense of possession of explosives if he possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

(a) has the purpose to use such explosive, material, or device to commit an offense; or

(b) knows that another has the purpose to use such explosive, material, or device to commit an offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years.

History: En. 94-6-105 by Sec. 1, Ch. 513, L. 1973; Sec. 94-6-105, R.C.M. 1947; amd. and redes. 94-8-209.3 by Sec. 74, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.3.

45-8-336. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or a fine of not less than $1,000 or more than $20,000 or by both such fine and imprisonment.

History: En. 94-8-209.4 by Sec. 75, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.4.

45-8-337. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

History: En. 94-8-209.5 by Sec. 76, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.5.

45-8-338 through 45-8-340 reserved.

45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

History: En. Sec. 1, Ch. 87, L. 1969; Sec. 94-3578.1, R.C.M. 1947; redes. 94-8-219 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-219.

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

History: En. Sec. 2, Ch. 87, L. 1969; Sec. 94-3578.2, R.C.M. 1947; redes. 94-8-220 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-220.

45-8-343. Firing firearms. Every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding $25.

History: En. Secs. 1, 2, p. 46, Ex. L. 1873; re-en. Sec. 185, 4th Div. Rev. Stat. 1879; re-en. Sec. 228, 4th Div. Comp. Stat. 1887; amd. Sec. 1161, Pen. C. 1895; re-en. Sec. 8834, Rev. C. 1907; re-en. Sec. 11530, R.C.M. 1921; re-en. Sec. 11530, R.C.M. 1935; Sec. 94-3578, R.C.M. 1947; redes. 94-8-218 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 39, Ch. 359, L. 1977; R.C.M. 1947, 94-8-218.

45-8-344. Use of firearms by children under fourteen prohibited. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms of any description loaded with powder and lead, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R.C.M. 1921; re-en. Sec. 11565, R.C.M. 1935; Sec. 94-3579, R.C.M. 1947; amd. Sec. 1, Ch. 139, L. 1963; redes. 94-8-221 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 40, Ch. 359, L. 1977; R.C.M. 1947, 94-8-221.

45-8-345. Criminal liability of parent or guardian — prosecution. (1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

History: En. Sec. 2, Ch. 111, L. 1907; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, R.C.M. 1921; re-en. Sec. 11566, R.C.M. 1935; Sec. 94-3580, R.C.M. 1947; redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-222.

CHAPTER 9

DANGEROUS DRUGS

Part 1 — Offenses Involving Dangerous Drugs

Section
45-9-101. Criminal sale of dangerous drugs.
45-9-102. Criminal possession of dangerous drugs.
45-9-103. Criminal possession with intent to sell.
45-9-104. Fraudulently obtaining dangerous drugs.
45-9-105. Altering labels on dangerous drugs.
45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.

45-9-107. Criminal possession of precursors to dangerous drugs.
45-9-108. Exemptions.

Part 2 — Procedural Provisions

45-9-201. Jurisdiction.
45-9-202. Alternative sentencing authority.

Part 1

Offenses Involving Dangerous Drugs

45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 5 years or more than life, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 10 years or more than life, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the prisoner furlough program while serving his term.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974; amd. Sec. 1, Ch. 359, L. 1977; amd. Sec. 1, Ch. 584, L. 1977; R.C.M. 1947, 54-132; amd. Sec. 1, Ch. 587, L. 1979.

45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment. A person convicted of a second or subsequent offense under this

subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 5, Ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974; amd. Sec. 2, Ch. 359, L. 1977; amd. Sec. 2, Ch. 584, L. 1977; R.C.M. 1947, 54-133.

45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(18), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section.

History: En. 54-133.1 by Sec. 1, Ch. 545, L. 1975; amd. Sec. 3, Ch. 584, L. 1977; R.C.M. 1947, 54-133.1.

45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969; amd. Sec. 3, Ch. 359, L. 1977; R.C.M. 1947, 54-134.

45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101.

History: **En. Sec. 7, Ch. 314, L. 1969; amd. Sec. 4, Ch. 359, L. 1977; R.C.M. 1947, 54-135.**

45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. A person convicted of fraudulently obtaining dangerous drugs or altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

History: **En. Sec. 8, Ch. 314, L. 1969; R.C.M. 1947, 54-136.**

45-9-107. Criminal possession of precursors to dangerous drugs. (1) A person commits the offense of criminal possession of precursors to dangerous drugs if he possesses:

(a) both phenyl-2-propanone (phenylacetone) and formamide or hydroxylamine at the same time with the intent to manufacture amphetamine;

(b) both phenyl-2-propanone (phenylacetone) and methylamine or N-methylformamide at the same time with the intent to manufacture methamphetamine;

(c) both piperidine and cyclohexanone at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP).

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years.

History: **En. Sec. 1, Ch. 291, L. 1979.**

45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacists to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research which is authorized by the college or university.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose.

History: **En. Secs. 2, 3, Ch. 291, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 291, L. 1979, provided: "A statement of intent is required for this bill in that in section 3 it delegates authority to the Board of Pharmacy to adopt rules.

House Bill 422 defines the offense of criminal possession of precursors to certain dangerous drugs. The bill provides that its provisions do not apply to those persons or businesses which have a legitimate reason for possessing the precursors. It is possible that certain persons, businesses or research facilities may now or at a later date have a legitimate need for these precursors. The purpose for giving rulemaking authority to the Board of Pharmacy is that it can best determine whether a person, business or research facility has a legitimate need for the precursors. It will also alleviate having to amend the statute in future sessions if it appears that someone is entitled to be exempted from the criminal provisions of the statute."

Part 2

Procedural Provisions

45-9-201. Jurisdiction. The district court has exclusive trial jurisdiction over all prosecutions commenced under this chapter.

History: En. Sec. 10, Ch. 314, L. 1969; amd. Sec. 6, Ch. 359, L. 1977; R.C.M. 1947, 54-138.

45-9-202. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years.

History: En. Sec. 9, Ch. 314, L. 1969; amd. Sec. 5, Ch. 359, L. 1977; R.C.M. 1947, 54-137.

TITLE 46

CRIMINAL PROCEDURE

Ch.
1. General Provisions.
2. Jurisdiction.
3. Venue.
4. Investigative Procedures.
5. Search and Seizure.
6. Arrest.
7. Initial Appearance of Arrested Person.
8. Right to Counsel.
9. Bail.
10. Preliminary Examination.
11. Commencement of Prosecution.
12. Arraignment of Defendant.
13. Pretrial Motions.
14. Mental Competency of Accused.
15. Production of Evidence.
16. Trial in District Court.
17. Lower Court Proceedings.
18. Sentence and Judgment.
19. Execution of Judgment.
20. Appeals.
21. Postconviction Hearing.
22. Habeas Corpus.
23. Probation, Parole, and Clemency.
Chapters 24 through 29 reserved.
30. Uniform Criminal Extradition Act.
31. Interstate Agreement on Detainers.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Purpose and Application of Title

Section
46-1-101. Application.
46-1-102. Purpose and construction.

Part 2 — Definitions

46-1-201. Definitions.

Part 3 — Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action.
46-1-302. Notice of appeal to be served on attorney general.

Part 1

Purpose and Application of Title

46-1-101. Application. This title shall govern the procedure in all the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law.

History: En. 95-101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 184, L. 1977; R.C.M. 1947, 95-101.

46-1-102. Purpose and construction. These provisions are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

History: En. 95-102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-102.

Part 2

Definitions

46-1-201. Definitions. For the purposes of this title, the words and phrases described in this section have the meanings designated in this section, except when a particular context clearly requires a different meaning:

(1) "Charge" means a written statement presented to a court accusing a person of the commission of an offense and includes complaint, information, and indictment.

(2) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(3) "Court" means a place where justice is judicially administered and includes a judge thereof.

(4) "Judge" means a person who is invested by law with the power to perform judicial functions and includes court, justice of the peace, or city magistrate when a particular context so requires.

(5) "Judgment" means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(6) "Magistrate" is an officer having power to issue a warrant for the arrest of a person charged with an offense and includes:

(a) the justices of the supreme court;

(b) the judges of the district courts;

(c) justices of the peace;

(d) city magistrates in towns or cities.

(7) "Offense" means a violation of any penal statute of this state or of any ordinance of its political subdivisions.

(8) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(9) "Sentence" is the punishment imposed on the defendant by the court.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-201, 95-203, 95-204, 95-205, 95-206, 95-207, 95-208, 95-209, 95-210, 95-211.

Part 3

Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: **En. Sec. 1, Ch. 91, L. 1979.**

46-1-302. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: **En. Sec. 2, Ch. 91, L. 1979.**

CHAPTER 2

JURISDICTION

Part 1 — Jurisdiction of the State

Section
46-2-101. State criminal jurisdiction.

Part 2 — Jurisdiction of the Courts

46-2-201. Jurisdiction of the district court.
46-2-202. Jurisdiction of justices' courts.
46-2-203. Jurisdiction of city courts.
46-2-204. Jurisdiction of municipal courts.

Part 1

Jurisdiction of the State

46-2-101. State criminal jurisdiction. (1) A person is subject to prosecution in this state for an offense which he commits while either within or outside the state by his own conduct or that of another for which he is legally accountable if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state and an act in furtherance of the offense occurs in the state; or

(c) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is an element of the offense or the result which is an element occurs

within the state. In homicide, the "result" is either the physical contact which causes death or the death itself, and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(4) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

History: En. 95-304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-304.

Part 2

Jurisdiction of the Courts

46-2-201. Jurisdiction of the district court. The district courts have jurisdiction of all public offenses not otherwise provided for.

History: En. 95-301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-301.

46-2-202. Jurisdiction of justices' courts. The justices' courts have criminal jurisdiction as authorized by 3-10-303.

History: En. 95-302.1 by Sec. 2, Ch. 184, L. 1977; R.C.M. 1947, 95-302.1.

46-2-203. Jurisdiction of city courts. The city courts have criminal jurisdiction as authorized by 3-11-102 and 3-11-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(a).

46-2-204. Jurisdiction of municipal courts. Municipal courts have criminal jurisdiction as authorized by 3-6-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(b).

CHAPTER 3

VENUE

Part 1 — General Provisions

Section

46-3-101. Place of trial — change of venue.
46-3-102. When offense committed partly in one and partly in another county.
46-3-103. When offense committed on or near county boundary.
46-3-104. When a person commits or aids and abets an offense in another county.
46-3-105. Offenses committed while in transit.
46-3-106. Offense commenced outside the state.

Part 2 — Venue for Certain Specific Crimes

46-3-201. Death and cause of death in different places.
46-3-202. Stolen property.
46-3-203. Escape from prison.
46-3-204. Bigamy.
46-3-205. Kidnapping.
46-3-206. Treason.

Part 1

General Provisions

46-3-101. Place of trial — change of venue. (1) In all criminal prosecutions the trial shall be in the county where the offense was committed unless otherwise provided by law.

(2) All objections to improper place of trial are waived by a defendant unless made before trial. If an objection is made, a hearing shall be held and the venue established before proceeding to trial.

History: En. 95-401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-401.

46-3-102. When offense committed partly in one and partly in another county. Where two or more acts are requisite to the commission of any offense, the trial may be in any county in which any of such acts occur.

History: En. 95-402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-402.

46-3-103. When offense committed on or near county boundary. Where an offense is committed on or within one-half mile of the boundary of two or more counties and it cannot be readily determined in which county the offense was committed, the offender may be tried in any of such counties.

History: En. 95-403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-403.

46-3-104. When a person commits or aids and abets an offense in another county. Where a person in one county commits, aids, abets, or procures the commission of an offense in another county, the offender may be tried in either county.

History: En. 95-404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-404.

46-3-105. Offenses committed while in transit. If an offense is committed in, on, or against any instrument of conveyance passing within this state and it cannot readily be determined in which county the offense was committed, the offender may be tried in any county through which such instrument of conveyance has passed or in the county where the travel terminates.

History: En. 95-405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-405.

46-3-106. Offense commenced outside the state. If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense was consummated.

History: En. 95-407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-407.

Part 2

Venue for Certain Specific Crimes

46-3-201. Death and cause of death in different places. If cause of death is inflicted in one county and the death ensues in another county, the offender may be tried in either county.

History: En. 95-406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-406.

46-3-202. Stolen property. When a person obtains property by theft, robbery, or deceptive practices, he may be tried in any county in which he exerted control over such property.

History: **En. 95-408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 71, Ch. 359, L. 1977; R.C.M. 1947, 95-408.**

46-3-203. Escape from prison. A person who escapes from prison may be tried in any county in the state.

History: **En. 95-409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-409.**

46-3-204. Bigamy. A person who commits the offense of bigamy may be tried in any county where the bigamous marriage or bigamous cohabitation has occurred.

History: **En. 95-410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-410.**

46-3-205. Kidnapping. A person who commits the offense of kidnapping may be tried in any county in which his victim has traveled or has been confined during the course of the offense.

History: **En. 95-411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-411.**

46-3-206. Treason. A person who commits the offense of treason may be tried in any county.

History: **En. 95-412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-412.**

CHAPTER 4

INVESTIGATIVE PROCEDURES

Part 1 — Investigation of Death—Autopsy

Section
46-4-101. Jurisdiction — death and cause of death in different counties.
46-4-102. Investigation of suspicious deaths.
46-4-103. Autopsy — when conducted, record, scope.
46-4-104. Liability of a mortuary or physician.

Part 2 — Inquests

46-4-201. Inquest — definition, when held, how conducted.
46-4-202. Summoning and swearing in of jurors.
46-4-203. Subpoenaing of witnesses.
46-4-204. Witness compelled to attend.
46-4-205. Verdict of jury — form.
46-4-206. Recording and filing of testimony and proceedings.
46-4-207. Coroner's register.

Part 3 — Investigative Subpoenas

46-4-301. Issuance of subpoena.
46-4-302. Penalty for failure to obey.
46-4-303. Relief from improper subpoena.
46-4-304. Conduct of investigative inquiry.
46-4-305. Self-incrimination and immunity.
46-4-306. Applicability of other laws — costs.

Part 1

Investigation of Death — Autopsy

46-4-101. Jurisdiction — death and cause of death in different counties. When death occurs as a direct result of acts or events which occurred in another county, the coroner of either county shall have jurisdiction. If a conflict of jurisdiction should arise or should said coroners fail to act, the coroner of the county where the death occurred shall have the primary jurisdiction.

History: En. 95-812 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-812.

46-4-102. Investigation of suspicious deaths. (1) Whenever a coroner is informed that a death was caused by other than natural causes or that a death has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct or when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner shall make an investigation thereof.

(2) It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner of the county in which death apparently occurred.

(3) In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case.

History: En. 95-801 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 530, L. 1977; R.C.M. 1947, 95-801.

46-4-103. Autopsy — when conducted, record, scope. (1) If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

(2) A full record of the facts found shall be made on a form provided by the division of forensic science in triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney.

(3) The right to conduct an autopsy shall include the right to retain such specimens as the medical examiner performing the autopsy deems necessary.

(4) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner.

History: En. 95-802 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 25, Ch. 530, L. 1977; R.C.M. 1947, 95-802.

46-4-104. Liability of a mortuary or physician. No person or firm owning a mortuary or any person employed in such a mortuary shall be liable for the acts of the coroner performed in the removal of any body to a mortuary or during the course of an autopsy on such body. No criminal or civil action shall arise against a licensed physician for performing an autopsy authorized by this chapter.

History: En. 95-813 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-813.

Part 2

Inquests

46-4-201. Inquest — definition, when held, how conducted. (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person.

(2) The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, when the death of any person occurs in a jail or penal institution or from the use of a firearm by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest.

(3) If an inquest is held, the proceedings shall be public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. Such inquest is to be held in accordance with this part.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sec. 95-809, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-809.

46-4-202. Summoning and swearing in of jurors. (1) For holding such inquest, the coroner must summon a jury of not more than nine persons qualified by law to serve as jurors.

(2) When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict thereon, according to the evidence offered to them or arising from the inspection of the body.

History: (1)En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; (2)En. 95-804 by Sec. 1, Ch. 196, L. 1967; Sec. 95-804, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-804.

46-4-203. Subpoenaing of witnesses. A coroner may issue subpoenas for witnesses, returnable immediately or at such time and place as he may designate, which may be served by any competent person. He shall summon and examine as a witness each person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

History: En. 95-805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-805; amd. Sec. 1, Ch. 116, L. 1979.

46-4-204. Witness compelled to attend. A witness served with a subpoena may be compelled to attend and testify or be punished as upon a subpoena issued by a justice of the peace.

History: En. 95-806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-806.

46-4-205. Verdict of jury — form. After inspecting the body and hearing the testimony, the jury must render its verdict, which shall be by majority vote, and certify the same in writing signed by them and setting forth who the deceased person is, when, where, and by what means he came to his death, and if he was killed or his death occasioned by the act of another by criminal means, who committed the act.

History: **En. 95-807 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-807.**

46-4-206. Recording and filing of testimony and proceedings. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction and forthwith filed by him with the inquisition in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer. Such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: **En. 95-808 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-808.**

46-4-207. Coroner's register. The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, such description of the deceased as may be sufficient for identification.

History: **En. 95-811 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-811.**

Part 3

Investigative Subpoenas

46-4-301. Issuance of subpoena. Whenever the attorney general or a county attorney has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the attorney general or the county attorney and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may issue only when it appears upon the affidavit of the attorney general or the county attorney that the administration of justice requires it to be issued.

History: **En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(1).**

46-4-302. Penalty for failure to obey. A person who, without just cause, fails to obey a subpoena served on him pursuant to this part is punishable for contempt of court.

History: **En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(2).**

46-4-303. Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion shall be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

History: **En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(3).**

46-4-304. Conduct of investigative inquiry. (1) The attorney general or the county attorney may examine under oath all witnesses subpoenaed pursuant to this part. Testimony shall be recorded. The witness has the right to have counsel present at all times. If he does not have funds to obtain counsel, the judge or justice shall appoint counsel for him.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

History: En. 95-721 by Sec. 2, Ch. 486, L. 1977; R.C.M. 1947, 95-721.

46-4-305. Self-incrimination and immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, with the approval of the justice or judge who authorized the issuance of the subpoena on behalf of the state, grant any person subpoenaed immunity from prosecution or punishment for or on account of any transaction or other matter concerning which the person testifies or produces evidence pursuant to the subpoena. After being granted such immunity, no person may be excused from testifying on the grounds that his testimony may incriminate him. The immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(2) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

History: En. 95-722 by Sec. 3, Ch. 486, L. 1977; R.C.M. 1947, 95-722.

46-4-306. Applicability of other laws — costs. (1) The fees and mileage of witnesses subpoenaed pursuant to this part shall be the same as required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-111 through 46-15-114.

History: En. 95-723 by Sec. 4, Ch. 486, L. 1977; R.C.M. 1947, 95-723.

CHAPTER 5

SEARCH AND SEIZURE

Part 1 — Legality and Admissibility

Section
46-5-101. Searches and seizures — when authorized.
46-5-102. Scope of search incident to arrest.
46-5-103. When search and seizure not illegal.
46-5-104. Admissibility in other proceedings.

Part 2 — Search Warrants

46-5-201. Search warrant defined.
46-5-202. Grounds for search warrant.
46-5-203. What may be seized with warrant.
46-5-204. Filing of application.
46-5-205. Who may serve warrant.
46-5-206. Service and execution of warrant.
46-5-207. When warrant may be executed.
46-5-208. Use of force in execution.
46-5-209. Detention and search of persons on premises.

Part 3 — Procedure in Regard to Property Seized

46-5-301. Return to court of things seized under search warrant.
46-5-302. Custody and disposition of things seized under search warrant.
46-5-303. Custody and disposition of things seized without search warrant.
46-5-304. Return of property seized.
46-5-305. Disposition of unclaimed property.

Part 4 — Stop and Frisk

46-5-401. Stop and frisk — when authorized.
46-5-402. Stop and frisk — procedure.

Part 5 — Roadblocks

46-5-501. Definition of temporary roadblock.
46-5-502. Authority to establish roadblocks.
46-5-503. Minimum requirements.
46-5-504. Existing law preserved.
46-5-505. Penalty.

Part 1

Legality and Admissibility

46-5-101. Searches and seizures — when authorized. A search of a person, object, or place may be made and instruments, articles, or things may be seized in accordance with the provisions of this chapter when the search is made:

(1) as an incident to a lawful arrest;

(2) with the consent of the accused or of any other person who is lawfully in possession of the object or place to be searched or who is believed upon reasonable cause to be in such lawful possession by the person making the search;

(3) by the authority of a valid search warrant;

(4) under the authority and within the scope of a right of lawful inspection granted by law.

History: En. 95-701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-701.

46-5-102. Scope of search incident to arrest. When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

(1) protecting the officer from attack;

(2) preventing the person from escaping;

(3) discovering and seizing the fruits of the crime; or

(4) discovering and seizing any persons, instruments, articles, or things which may have been used in the commission of or which may constitute evidence of the offense.

History: En. 95-702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-702.

46-5-103. When search and seizure not illegal. No search and seizure, whether with or without warrant, shall be held to be illegal as to a defendant if:

(1) the defendant has disclaimed any right to or interest in the place or object searched or the instruments, articles, or things seized;

(2) no right of the defendant has been infringed by the search and seizure; or

(3) any irregularities in the proceedings do not affect the substantial rights of the accused.

History: En. 95-717 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-717.

46-5-104. Admissibility in other proceedings. Instruments, articles, or things lawfully seized are admissible as evidence upon any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made.

History: En. 95-718 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-718.

Part 2

Search Warrants

46-5-201. Search warrant defined. A "search warrant" is an order:

(1) in writing;

(2) in the name of the state;

(3) signed by a judge;

(4) particularly describing the thing, place, or person to be searched and the instruments, articles, or things to be seized;

(5) directed to a peace officer commanding him to search for personal property and bring it before the judge.

History: En. 95-703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-703; amd. Sec. 2, Ch. 116, L. 1979.

46-5-202. Grounds for search warrant. (1) Any judge may issue a search warrant upon the written or telephonic application of any person, made under oath or affirmation before the judge, which:

(a) states that an offense has been committed;

(b) states facts sufficient to show probable cause for issuance of the warrant;

(c) particularly describes the place, things, or persons to be searched; and

(d) particularly describes the things to be seized.

(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn or affirmed telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when

the application is made. The recording must be retained in the court records and transcribed verbatim, including the time and date of recording, as soon as possible thereafter.

(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor.

History: En. 95-704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 7, Ch. 184, L. 1977; R.C.M. 1947, 95-704; amd. Sec. 3, Ch. 116, L. 1979; amd. Sec. 1, Ch. 339, L. 1979.

46-5-203. What may be seized with warrant. A search warrant may authorize the seizure of the following:

(1) contraband;

(2) any instruments, articles, or things which are the fruits of, have been used in the commission of, or may constitute evidence of any offense;

(3) any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state.

History: En. 95-705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-705.

46-5-204. Filing of application. The application on which the warrant is issued shall be retained by the judge but need not be filed with the clerk of the court or with the court, if there is no clerk, until the warrant has been executed or has been returned "not executed".

History: En. 95-706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-706.

46-5-205. Who may serve warrant. A search warrant may in all cases be served by any of the officers mentioned in its direction but by no other person except in aid of the officer on his requiring it, he being present and acting in its execution.

History: En. 95-707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-707.

46-5-206. Service and execution of warrant. Service of a search warrant is made by exhibiting the original warrant at the place to be searched. If the warrant is executed, a duplicate copy and a receipt for all articles taken shall be left with any person from whom any instruments, articles, or things are seized or, if no person is available, the copy and receipt shall be left at the place from which the instruments, articles, or things were seized. Failure to give or leave such a receipt shall not render the evidence inadmissible in a trial.

History: En. 95-708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-708.

46-5-207. When warrant may be executed. (1) The warrant may be executed at any time of any day or night.

(2) The warrant shall be executed within 10 days from the time of issuance. Any warrant not executed within such time shall be void and shall be returned to the court or the judge issuing the same as "not executed".

History: **En. 95-711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-711.**

46-5-208. Use of force in execution. All necessary and reasonable force may be used to execute a search warrant or to effect an entry into any building or property or part thereof to execute a search warrant.

History: **En. 95-709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-709.**

46-5-209. Detention and search of persons on premises. In the execution of the warrant the person executing the same may reasonably detain and search any person in the place at the time:

(1) to protect himself from attack; or

(2) to prevent the disposal or concealment of any instruments, articles, or things particularly described in the warrant.

History: **En. 95-710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-710.**

Part 3

Procedure in Regard to Property Seized

46-5-301. Return to court of things seized under search warrant. The return of the warrant and all instruments, articles, and things seized shall be made promptly before the judge who issued the warrant or, if he is absent or unavailable, before the nearest available judge and shall be accompanied by a written inventory of any property taken, verified by the person executing the warrant. The judge shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

History: **En. 95-712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-712.**

46-5-302. Custody and disposition of things seized under search warrant. The judge before whom the instruments, articles, or things are returned shall enter an order providing for their custody or appropriate disposition pending further proceedings.

History: **En. 95-713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-713.**

46-5-303. Custody and disposition of things seized without search warrant. (1) Any peace officer seizing any instruments, articles, or things must give a receipt to the person from whose possession they are taken, but failure to give such a receipt shall not render the evidence seized inadmissible upon a trial.

(2) If an arrest has been made, all instruments, articles, or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken and thereafter handled and disposed of in accordance with 46-5-301, 46-5-302, and 46-5-304. If the person arrested is released without a charge being preferred against him, all instruments, articles, or things seized from him other than contraband shall be returned to him upon release.

(3) If no arrest has been made, such instruments, articles, or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with 46-5-301, 46-5-302, and 46-5-304 or returned to the person from whom they were taken.

History: En. 95-714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-714.

46-5-304. Return of property seized. (1) Any person claiming the right to possession of property seized as evidence may apply to the judge to whom it has been delivered for its return. The judge shall give such notice as he deems adequate to the county attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership.

(2) If the right to possession is proved to the judge's satisfaction, he shall order the property other than contraband returned if:

(a) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) all proceedings in which it might be required have been completed.

History: En. 95-715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-715.

46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized and if after proper inquiry the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from the sale, after deduction of the costs of storage, preservation of the property, and the sale, must be paid into the county treasury.

History: En. 95-716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-716; amd. Sec. 4, Ch. 116, L. 1979.

Part 4

Stop and Frisk

46-5-401. Stop and frisk — when authorized. (1) A peace officer may stop any person he observes in circumstances that give him reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against a person or theft, damage, or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that he has reasonable cause to suspect has just been committed if:

(a) he has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that he has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property;

(b) he has reasonable cause to suspect the person committed the felony; and

(c) (i) the stop is reasonably necessary to obtain or verify the person's identity to determine whether to arrest the person for the felony; or

(ii) the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(1) thru (3).

46-5-402. Stop and frisk — procedure. (1) A peace officer who has lawfully stopped a person under this part may:

(a) frisk the person and take other reasonably necessary steps for protection if he has reasonable cause to suspect that the person is armed and presently dangerous to him or another person present; and

(b) take possession of any object that he discovers during the course of the frisk if he has probable cause to believe the object is a deadly weapon.

(2) A peace officer who has lawfully stopped a person under this part may demand of the person his name and his present or last address.

(3) A peace officer who has lawfully stopped a person under this part shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(4) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(4) thru (7).

Part 5

Roadblocks

46-5-501. Definition of temporary roadblock. For the purpose of this part, a "temporary roadblock" means any structure, device, or means used by the duly elected or appointed law enforcement officers of this state and their deputies for the purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(a).

46-5-502. Authority to establish roadblocks. The duly elected or appointed law enforcement officers of this state and their deputies are hereby authorized to establish, in their respective jurisdictions or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, checking for driver's licenses, and apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state.

History: **En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(b).**

46-5-503. Minimum requirements. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

(1) the temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than 100 yards in either direction;

(2) at the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;

(3) at the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic at a distance of not less than 100 yards;

(4) at a distance of not less than 200 yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway containing any wording of sufficient size and luminosity to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

History: **En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(c).**

46-5-504. Existing law preserved. Nothing in this part shall be deemed to limit or encroach upon the existing authority of Montana law enforcement officers in the performance of their duties involving traffic control.

History: **En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(d).**

46-5-505. Penalty. Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor and shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both fine and imprisonment.

History: **En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(e).**

CHAPTER 6

ARREST

Part 1 — General Provisions

Section
46-6-101. Definitions.
46-6-102. Persons exempt from arrest.

46-6-103. Magistrate may order arrest.
46-6-104. Method of arrest.
46-6-105. Time of making arrest.
46-6-106. Manner of arrest without a warrant.

Part 2 — Arrest Warrants

46-6-201. Issuance of arrest warrant upon complaint.
46-6-202. Form of warrant — execution.
46-6-203. Manner of arrest with a warrant.
46-6-204. Minor irregularities in warrant.

Part 3 — Summons

46-6-301. When summons may be issued — service.
46-6-302. Form of summons.
46-6-303. When warrant issued after summons.
46-6-304. Summons to a corporation.

Part 4 — Arrest by a Peace Officer

46-6-401. Circumstances in which a peace officer may make an arrest.
46-6-402. Assisting a peace officer.
46-6-403. Release by officer of person arrested.
46-6-404. Notice to appear.
Sections 46-6-405 through 46-6-410 reserved.
46-6-411. Close pursuit — arrest by officers of another state — procedure.

Part 5 — Arrest by a Private Person

46-6-501. Definitions.
46-6-502. When arrest by private person authorized.
46-6-503. Restrictions on arrest by merchant — liability.
46-6-504. Concealment not proof of theft.

Part 1

General Provisions

46-6-101. Definitions. (1) An "arrest" is taking a person into custody in the manner authorized by law.

(2) A "warrant of arrest" is a written order from a court directed to a peace officer or to some other person specifically named commanding him to arrest a person. This term includes the original warrant of arrest or a copy certified by the issuing court.

(3) A "summons" is a written order issued by the court which commands a person to appear before a court at a stated time and place.

(4) A "notice to appear" is a written direction issued by a peace officer that a person appear before a court at a stated time and place to answer an offense set forth therein.

History: En. 95-601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-601.

46-6-102. Persons exempt from arrest. (1) Electors shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at election and in going to and returning from the same.

(2) Senators and representatives shall in all cases except felony or breach of the peace be privileged from arrest during the sessions of the state legislature and in going to and returning from the same.

(3) The militia shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at musters and election and in going to and returning from the same.

(4) Judges, attorneys, clerks, sheriffs, and other court officers shall be privileged from arrest while attending court and while going to and returning from court.

History: En. 95-616 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-616.

46-6-103. Magistrate may order arrest. A magistrate may orally order a peace officer or private person to arrest anyone committing or attempting to commit a public offense in the presence of such magistrate.

History: En. 95-617 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-617.

46-6-104. Method of arrest. (1) An arrest is made by an actual restraint of the person to be arrested or by his submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain him.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

History: En. 95-602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-602.

46-6-105. Time of making arrest. An arrest may be made on any day and at any time of the day or night, except that a person cannot be arrested in his home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a magistrate endorsed upon a warrant of arrest.

History: En. 95-607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-607.

46-6-106. Manner of arrest without a warrant. A peace officer or person making an arrest without a warrant must inform the person to be arrested of his authority, if any, of the intention to arrest him, and the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission or after an escape or when the giving of such information will imperil the arrest.

History: En. 95-606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-606.

Part 2

Arrest Warrants

46-6-201. Issuance of arrest warrant upon complaint. (1) A complaint, as the basis of an arrest warrant, shall be in writing.

(2) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses.

(3) If it appears from the contents of the complaint and the examination of the complainant and other witnesses, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. Upon the request of the county attorney, the court shall issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(1) thru (3).

46-6-202. Form of warrant — execution. (1) A warrant of arrest shall:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or, if the judge is absent or unable to act, before the nearest or most accessible court in the same county or the adjoining county;

(d) specify the name of the person to be arrested or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of his office.

(2) The warrant of arrest may specify the amount of bail.

(3) The warrant shall be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. However, warrants issued for the violation of city ordinances cannot be executed outside the city limits, except as otherwise provided by 7-32-4301 and 7-32-4302.

(4) If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made or the adjoining county.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 7, Ch. 184, L. 1977; R.C.M. 1947, 95-603(4) thru (6).

46-6-203. Manner of arrest with a warrant. When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, of the intention to arrest him, of the cause of the arrest, and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the peace officer has an opportunity to so inform him or when the giving of such information will imperil the arrest. The peace officer need not have the warrant in his possession at the time of the arrest, but after the arrest the warrant must be shown to the person arrested as soon as practicable if such person so requests.

History: En. 95-604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-604; amd. Sec. 5, Ch. 116, L. 1979.

46-6-204. Minor irregularities in warrant. No warrant of arrest shall be dismissed nor shall any person in custody for an offense be discharged from such custody because of technical irregularities not affecting the substantial rights of the accused.

History: En. 95-605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-605.

Part 3

Summons

46-6-301. When summons may be issued — service. (1) When authorized to issue a warrant of arrest, a court may in lieu thereof issue a summons.

(2) The summons may be personally served in the same manner as the summons in a civil action.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(a), (c).

46-6-302. Form of summons. The summons shall:

(1) be in writing in the name of the state of Montana;

(2) state the name of the person summoned and his address, if known;

(3) set forth the nature of the offense;

(4) state the date when issued and the municipality or county where issued;

(5) be signed by the judge of the court with the title of his office; and

(6) command the person to appear before a court at a certain time and place.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(b).

46-6-303. When warrant issued after summons. Upon failure of the person summoned to appear, the magistrate shall issue a warrant of arrest. If after issuing a summons the magistrate becomes satisfied that the person summoned will not appear as commanded by the summons, he may at once issue a warrant of arrest.

History: En. 95-613 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-613.

46-6-304. Summons to a corporation. (1) Upon a charge filed against a corporation for the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(2) The summons for the appearance of a corporation may be served in the manner provided for service of summons upon a corporation in a civil action.

(3) If after being summoned the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued and such court shall proceed to trial and judgment without further process.

History: En. 95-615 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-615.

Part 4

Arrest by a Peace Officer

46-6-401. Circumstances in which a peace officer may make an arrest. A peace officer may arrest a person when:

(1) he has a warrant commanding that such person be arrested;

(2) he believes on reasonable grounds that a warrant for the person's arrest has been issued in this state;

(3) he believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction; or

(4) he believes on reasonable grounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest.

History: **En. 95-608 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-608.**

46-6-402. Assisting a peace officer. (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.

(2) A person commanded to aid a peace officer shall have the same authority to arrest as that officer.

(3) A person commanded to aid a peace officer in making an arrest shall not be civilly liable for any reasonable conduct in aid of the officer.

History: **En. 95-609 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 60, Ch. 535, L. 1975; R.C.M. 1947, 95-609.**

46-6-403. Release by officer of person arrested. A peace officer having custody of a person arrested without a warrant is authorized to release the person without requiring him to appear before a court when the officer is satisfied that there are no grounds for criminal complaint against the person arrested.

History: **En. 95-610 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-610.**

46-6-404. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, he may instead issue to such person a notice to appear.

(2) The notice shall:

(a) be in writing;

(b) state the name of the person and his address, if known;

(c) set forth the nature of the offense;

(d) be signed by the officer issuing the notice; and

(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or warrant of arrest may issue.

History: **En. 95-614 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-614.**

46-6-405 through 46-6-410 reserved.

46-6-411. Close pursuit — arrest by officers of another state — procedure. (1) Any peace officer of another state of the United States who enters this state in close pursuit and continues within this state in such close pursuit of a person in order to arrest him shall have the same authority to arrest and hold in custody such person as peace officers of this state have to arrest and hold in custody a person on the ground that he has committed a crime in this state.

(2) If an arrest is made in this state by an officer of another state in accordance with the provisions of subsection (1), he shall without unnecessary delay take the person arrested before a judge of a court of record, who

shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subsection (1) and not of determining the guilt or innocence of the arrested person. If the judge determines that the arrest was in accordance with such provisions, he shall commit the person arrested to the custody of the officer making the arrest, who shall without unnecessary delay take him to the state from which he fled. If the judge determines that the arrest was unlawful, he shall discharge the person arrested.

(3) Subsection (1) shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

(4) For the purpose of this section, the word "state" shall include the District of Columbia.

(5) This section may be cited as the "Uniform Act on Close Pursuit".

History: En. 95-619 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-619(part).

Part 5

Arrest by a Private Person

46-6-501. Definitions. As used in this part, the following definitions apply:

(1) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct shall be prima facie evidence of concealment:

(a) concealing merchandise upon the person or in a container or otherwise removing such merchandise from full view while upon the premises;

(b) removing, changing, or altering any price tag;

(c) transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale by the merchant; or

(d) abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise;

(2) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

History: En. 95-611.1 by Sec. 1, Ch. 274, L. 1974; R.C.M. 1947, 95-611.1.

46-6-502. When arrest by private person authorized. A private person may arrest another when:

(1) he believes on reasonable grounds that an offense is being committed or attempted in his presence;

(2) a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or

(3) he is a merchant, as defined in 30-11-301, and has probable cause to believe the other is shoplifting in the merchant's store.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

46-6-503. Restrictions on arrest by merchant — liability. (1) A merchant acting under 46-6-502 may stop and temporarily detain the suspected shoplifter. The merchant in such event:

(a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;

(b) may demand of the person his name and his present or last address and may question the person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting;

(c) may take into possession any merchandise for which the purchase price has not been paid and which is in the possession of the person or has been concealed from full view; and

(d) may place the person under arrest or request the person to remain on the premises until a peace officer arrives.

(2) Any stop, detention, questioning, or recovery of merchandise under 46-6-502(3) and this section shall be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, 46-6-502 and this section shall not authorize a search of the detained person other than a search of his coat or other outer garments and any package, briefcase, or other container, unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer.

(3) Such stop and temporary detention, with or without questioning or removal of merchandise, when done by a merchant in compliance with the law, shall not constitute an unlawful arrest or search. A merchant stopping, detaining, or arresting a person on the belief that such person is shoplifting is not liable for damages to such person unless the merchant acts with malice, either actual or implied, or contrary to the provisions of this law.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

46-6-504. Concealment not proof of theft. Concealment of merchandise shall not constitute proof of the commission of the offense of theft.

History: En. 95-611.2 by Sec. 2, Ch. 274, L. 1974; R.C.M. 1947, 95-611.2.

CHAPTER 7

INITIAL APPEARANCE OF ARRESTED PERSON

Part 1 — General Provisions

Section

46-7-101. Bringing arrested person before a court.
46-7-102. Duty of the court at initial appearance.
46-7-103. Preliminary hearing in justice's court.

Part 1

General Provisions

46-7-101. Bringing arrested person before a court. (1) Any person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant or, if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(2) Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person shall be filed forthwith.

History: En. 95-901 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-901.

46-7-102. Duty of the court at initial appearance. (1) The judge shall inform the defendant:

(a) of the charge against him;

(b) of his right to counsel;

(c) of his right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) that he is not required to make a statement and that any statement made by him may be offered in evidence at his trial.

(2) The judge shall admit the defendant to bail in accordance with the provisions of this title.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

46-7-103. Preliminary hearing in justice's court. After the initial appearance a justice's court shall, within a reasonable time, hold a preliminary examination unless the defendant waives a preliminary examination, the district court has granted leave to file an information, an indictment has been returned, or the case is triable in justice's court.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

CHAPTER 8

RIGHT TO COUNSEL

Part 1 — Extent of Right to Counsel

Section

46-8-101. Right to counsel.
46-8-102. Waiver of counsel.
46-8-103. Duration of appointment.
46-8-104. Appointment after trial.

Part 2 — Cost of Assigned Counsel

46-8-201. Remuneration of appointed counsel.
46-8-202. Public defender's office.

Part 1

Extent of Right to Counsel

46-8-101. Right to counsel. (1) Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel.

(2) The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel. If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel, a court of record must assign counsel to defend him.

(3) If the offense charged is a misdemeanor and if the defendant desires counsel and is unable to employ counsel, a court of record in the interest of justice may assign counsel to defend him.

History: En. 95-1001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1001.

46-8-102. Waiver of counsel. A defendant may waive his right to counsel, except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings following the filing of a petition under 41-5-501.

History: En. 95-1002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1002; amd. Sec. 2, Ch. 386, L. 1979.

46-8-103. Duration of appointment. Where counsel has been assigned, such assignment shall be effective until final judgment, including any proceeding upon direct appeal, unless relieved by order of the court.

History: En. 95-1003 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1003.

46-8-104. Appointment after trial. Any court of record may assign counsel to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if he desires counsel and is unable to employ counsel.

History: En. 95-1004 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1004.

Part 2

Cost of Assigned Counsel

46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable to the county in which the proceeding arose, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice, the expense must be borne by the state agency causing the arrest.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973; amd. Sec. 1, Ch. 15, L. 1974; amd. Sec. 9, Ch. 184, L. 1977; R.C.M. 1947, 95-1005; amd. Sec. 2, Ch. 218, L. 1979.

46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at county expense.

History: **En. 95-1006 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1006.**

CHAPTER 9

BAIL

Part 1 — Definition and Availability of Bail

Section

46-9-101. Definition and purpose.
46-9-102. Bailable offenses.
46-9-103. Bail after conviction.
46-9-104. Bail on a new trial.
Sections 46-9-105 through 46-9-110 reserved.
46-9-111. Release on own recognizance.

Part 2 — Bail—General Procedural Provisions

46-9-201. Who may admit to bail.
46-9-202. Giving bail before another court or judge.
46-9-203. Report to county attorney concerning drug users.
46-9-204. Discharge of defendant.
46-9-205. Surrender of defendant.

Part 3 — The Amount of Bail

46-9-301. Determining the amount of bail.
46-9-302. Bail schedule for minor offenses — acceptance by peace officer.
46-9-303. Bail set in warrant — acceptance by peace officer.
Sections 46-9-304 through 46-9-310 reserved.
46-9-311. Reduction, increase, revocation, or substitution of bail.

Part 4 — Furnishing Bail

46-9-401. How bail furnished.
46-9-402. Persons prohibited from furnishing bail security.
46-9-403. Qualifying property as bail.
46-9-404. Justifying the bail.
Sections 46-9-405 through 46-9-410 reserved.
46-9-411. Definition of guaranteed arrest bond certificate.
46-9-412. Sureties for guaranteed arrest bond certificates.
46-9-413. Certification of sureties to courts — withdrawal as surety.
46-9-414. Motor vehicle violations — certificates accepted in lieu of cash.

Part 5 — Conditions of Bail—Violation Thereof

46-9-501. Form of conditions of bail.
46-9-502. Conditions performed — bail discharged.
46-9-503. Conditions not performed — forfeiture.
46-9-504. Procedure on forfeiture.
46-9-505. Issuance of arrest warrant — redetermining bail.

Part 1

Definition and Availability of Bail

46-9-101. Definition and purpose. "Bail" is the security given for the purpose of insuring the presence of the defendant in a pending criminal proceeding.

History: En. 95-1101 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1101.

46-9-102. Bailable offenses. (1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged.

(2) On the hearing of an application for admission to bail made before or after indictment or information for a capital offense, the burden of showing that the proof is evident or the presumption great that the defendant is guilty of the offense is on the state.

History: En. 95-1108 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1108.

46-9-103. Bail after conviction. (1) After conviction of an offense not punishable by death, a defendant who intends to appeal may be admitted to bail:

(a) as a matter of right, from a judgment imposing a fine only or any judgment rendered by a justice's or city court;

(b) as a matter of discretion in all other cases.

(2) A defendant convicted of the offense of deliberate homicide is presumed to be a danger to others and not entitled to be admitted to bail, which presumption is rebuttable.

History: En. 95-1109 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1109; amd. Sec. 1, Ch. 207, L. 1979.

46-9-104. Bail on a new trial. If the judgment of conviction is reversed and the cause remanded for a new trial, the trial court may order that the bail stand pending such trial or substitute, reduce, or increase bail.

History: En. 95-1119 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 12, Ch. 184, L. 1977; R.C.M. 1947, 95-1119.

46-9-105 through 46-9-110 reserved.

46-9-111. Release on own recognizance. Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required. Any person released as herein provided shall be fully apprised by the court of the penalty provided for failure to comply with the terms of his recognizance.

History: En. 95-1106 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1106.

Part 2

Bail — General Procedural Provisions

46-9-201. Who may admit to bail. Any judge may admit any defendant properly appearing before him in such proceeding to bail. When bound over to any court or judge having jurisdiction of the offense charged, bail shall be continued provided the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, any judge before whom the trial was had or any judge having the power to issue a writ of habeas corpus may admit the defendant to bail.

History: **En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(a).**

46-9-202. Giving bail before another court or judge. The defendant, when arrested for a bailable offense, must be taken without unnecessary delay before the nearest or most accessible judge in order that bail may be fixed. If the defendant is brought before a judge other than the court in which the charge is pending, the judge must establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending. Upon acceptance of bail, the judge must deliver the bail without delay to the court in which the charge is pending.

History: **En. 95-1105 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1105.**

46-9-203. Report to county attorney concerning drug users. A city judge, judge of a municipal court, or justice of the peace shall report immediately to the county attorney of the county wherein his court is located any knowledge or information acquired by him in a trial of a cause or hearing before him, which knowledge or information shows or tends to show that any person is a drug user or drug addict. If such person is under arrest or liberated on bail at the time the knowledge or information is acquired, such person may not be liberated, if under arrest, or the bail discharged by the judge or justice of the peace until the report is made to the county attorney.

History: **En. Sec. 10, Ch. 202, L. 1921; re-en. Sec. 3198, R.C.M. 1921; re-en. Sec. 3198, R.C.M. 1935; R.C.M. 1947, 66-1520; amd. Sec. 6, Ch. 116, L. 1979.**

46-9-204. Discharge of defendant. Upon allowance and acceptance of bail the defendant, if he is in custody, must be discharged.

History: **En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(b).**

46-9-205. Surrender of defendant. (1) (a) At any time before the forfeiture of bail, the defendant may surrender himself to the officer to whose custody he was committed at the time of giving bail.

(b) At any time before the forfeiture of bail, the sureties or surety company may surrender the defendant to the officer to whose custody he was committed and for this purpose may themselves arrest the defendant or by written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

(2) The officer must detain the defendant in his custody as upon commitment and shall file a certificate in the court having jurisdiction of the defendant acknowledging the surrender. Such court may then order the bail exonerated.

History: **En. 95-1115 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1115.**

Part 3

The Amount of Bail

46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to assure compliance with the conditions set forth in the bail;

(2) not oppressive;

(3) commensurate with the nature of the offense charged;

(4) considerate of the financial ability of the accused;

(5) considerate of the defendant's prior record, employment status, and family background.

History: En. 95-1110 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1110.

46-9-302. Bail schedule for minor offenses — acceptance by peace officer. (1) A justice of the peace or city judge may, in his discretion, establish and post a schedule of cash bail for offenses not amounting to a felony.

(2) A peace officer may accept bail in behalf of the justice of the peace or city judge in accordance with the schedule. In the event the peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1103 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1103.

46-9-303. Bail set in warrant — acceptance by peace officer. A peace officer may accept cash bail in behalf of a judge whenever the warrant of arrest specifies the amount of bail. Whenever a peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1104 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 10, Ch. 184, L. 1977; R.C.M. 1947, 95-1104.

46-9-304 through 46-9-310 reserved.

46-9-311. Reduction, increase, revocation, or substitution of bail. (1) Upon application by the state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

History: En. 95-1111 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1111; amd. Sec. 7, Ch. 116, L. 1979.

Part 4

Furnishing Bail

46-9-401. How bail furnished. Bail may be furnished by the defendant in any of the following ways:

(1) by a deposit with the clerk of the court of an amount equal to the required bail of cash, stocks, or bonds or any combination thereof approved by the judge;

(2) by real estate situated in this state with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail;

(3) by written undertaking executed by the defendant and by two sufficient sureties; or

(4) by a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of such surety company.

History: En. 95-1112 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1112.

46-9-402. Persons prohibited from furnishing bail security. No attorney-at-law and no official authorized to admit another to bail shall act as surety or furnish bail.

History: En. 95-1120 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1120.

46-9-403. Qualifying property as bail. (1) If the bail is stock or bonds or both, the accused or sureties shall file a sworn schedule which must contain a list of the stocks and bonds deposited describing each in sufficient detail that it may be identified, the market value of each stock or bond, and the total market value of the stocks and bonds listed.

(2) (a) If the bail is real estate, the accused or sureties shall file a sworn schedule which must contain a legal description of the real estate, a description of any and all encumbrances on the real estate including the amount of each and the holder thereof, and the market value of the unencumbered equity owned by the affiant.

(b) A certified copy of the schedule of real estate must be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated, and the state has a lien on such real estate from the time the copy is filed. The clerk and recorder shall enter, index, and record the schedule without requiring any fee.

(3) If the bail is a written undertaking with sureties, each surety must be a resident or freeholder within the state. Each surety must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification is equivalent to that of sufficient bail.

(4) If the bail is a commercial surety bond, it may be executed by any domestic or foreign surety company which is qualified to transact surety business in this state.

History: En. 95-1113 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1113; amd. Sec. 8, Ch. 116, L. 1979.

46-9-404. Justifying the bail. The sureties must in all cases justify by sworn affidavit that they each possess the qualifications provided in 46-9-403. The court may further examine the sufficiency of the bail, upon oath, in such manner as it may deem proper. In all cases the state may challenge the bail or the sufficiency of the sureties.

History: En. 95-1114 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1114.

46-9-405 through 46-9-410 reserved.

46-9-411. Definition of guaranteed arrest bond certificate. The term "guaranteed arrest bond certificate" means any printed card or other certificate which:

(1) is issued by an automobile club or association or insurance company to any of its members or insureds; and

(2) is signed by the member or insured and contains a printed statement that the automobile club, automobile association, or insurance company and a surety company or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana:

(a) guarantee the appearance of the person whose signature appears on the card or certificate; and

(b) will, in the event of the failure of the person to appear in court at the time of trial, pay any fine or forfeiture imposed on the person in an amount not exceeding $100.

History: **En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(3).**

46-9-412. Sureties for guaranteed arrest bond certificates. (1) A domestic or foreign surety company which has qualified to transact surety business in this state may in any year become surety in an amount not exceeding $100 with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking thus to become surety.

(2) The undertaking shall be in a form to be prescribed by the commissioner and shall state the following:

(a) the name and address of the automobile clubs, automobile associations, or insurance companies which issued the guaranteed arrest bond certificates with respect to which the surety company undertakes to be surety; and

(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not exceeding $100 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

History: **En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(1), (2).**

46-9-413. Certification of sureties to courts — withdrawal as surety. (1) The commissioner of insurance shall certify to each justice of the peace, city magistrate, and district judge the names of surety companies which have become sureties with respect to guaranteed arrest bond certificates and shall likewise immediately notify such official upon the withdrawal of such company as surety.

(2) No such withdrawal by any company shall be effective for 30 days after the filing thereof with the state insurance commissioner.

History: **En. 95-1123 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1123.**

46-9-414. Motor vehicle violations — certificates accepted in lieu of cash. A guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state as provided in 46-9-411 and 46-9-412 shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not exceeding $100 as a bail bond to guarantee the appearance of the person in any court, including municipal courts, in this state at such time as may be required by the court when the person was arrested for violation of a motor vehicle law of this state or ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate. A guaranteed arrest bond certificate posted as a bail bond in a court in this state is subject to the same forfeiture and enforcement provisions as bail bonds posted in criminal cases, and a guaranteed arrest bond certificate posted as a bail bond in a municipal court in this state is subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

History: En. 95-1122 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 14, Ch. 184, L. 1977; R.C.M. 1947, 95-1122.

Part 5

Conditions of Bail — Violation Thereof

46-9-501. Form of conditions of bail. (1) If a person is admitted to bail before conviction, the conditions of bail shall be:

(a) that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and will not depart from this state without leave; and

(b) any other conditions that the court may reasonably prescribe to assure his appearance when required.

(2) If the defendant is admitted to bail after conviction, the conditions of bail shall be that:

(a) he will duly prosecute his appeal;

(b) he will appear at such time and place as the court may direct;

(c) he will not depart from this state without leave of the court; and

(d) if the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed.

History: En. 95-1118 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 184, L. 1977; R.C.M. 1947, 95-1118.

46-9-502. Conditions performed — bail discharged. When the conditions of bail have been performed and the accused has been discharged from his obligations in the cause, the court shall return to him or his sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate shall be discharged. If the bail is a written undertaking or a commercial surety bond, it shall be discharged and the sureties exonerated.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(a).

46-9-503. Conditions not performed — forfeiture. (1) If the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited.

(2) If such forfeiture is declared by a district court, notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address.

(3) If at any time within 30 days after the forfeiture the defendant or his bail appear and satisfactorily excuse his negligence or failure to comply with the conditions of the bail, the court, in its discretion, may direct the forfeiture of the bail to be discharged upon such terms as may be just.

(4) If such forfeiture is declared by a district court and if the forfeiture is not discharged as provided in this section, the court shall enter judgment for the state against the accused and his sureties for the amount of the bail and costs of the proceedings.

History: **En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(b), (c).**

46-9-504. Procedure on forfeiture. (1) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(2) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(3) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

History: **En. 95-1117 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1117.**

46-9-505. Issuance of arrest warrant — redetermining bail. (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or on his own recognizance.

(2) On verified application by the state setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) Upon the arrest, the defendant shall be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

History: **En. 95-1107 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1107.**

CHAPTER 10

PRELIMINARY EXAMINATION

Part 1 — General Provisions

Section
46-10-101. Definition of preliminary examination.
46-10-102. Waiver of preliminary examination.

Part 2 — Procedure at Preliminary Examination

46-10-201. When examination not public.
46-10-202. Presentation of evidence.
46-10-203. Disposition of defendant.
46-10-204. Record of examination.

Part 1

General Provisions

46-10-101. Definition of preliminary examination. A "preliminary examination" is a hearing before a justice of the peace for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

History: En. 95-1201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1201.

46-10-102. Waiver of preliminary examination. If the defendant waives the preliminary examination, the justice shall hold him to answer to the court having jurisdiction of the offense.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(b); amd. Sec. 9, Ch. 116, L. 1979.

Part 2

Procedure at Preliminary Examination

46-10-201. When examination not public. The justice may, in his discretion, and must upon the request of the defendant exclude from the preliminary examination every person not officially associated with the case before the court.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(c); amd. Sec. 10, Ch. 116, L. 1979.

46-10-202. Presentation of evidence. (1) The defendant may not enter a plea. The justice shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf.

(2) During the examination of any witness or when the defendant is making a statement or testifying, the justice may, and on the request of the defendant or state shall, exclude all other witnesses. He may also cause the

witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

History: **En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part), 95-1203; amd. Sec. 11, Ch. 116, L. 1979.**

46-10-203. Disposition of defendant. If from the evidence it appears that there is probable cause to believe that an offense has been committed by the defendant, the justice shall hold him to answer to the court having jurisdiction of the offense; otherwise, the justice shall discharge him.

History: **En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part); amd. Sec. 12, Ch. 116, L. 1979.**

46-10-204. Record of examination. (1) The testimony of each witness, in cases of homicide, must be reduced to writing as a deposition by a court-appointed stenographer. In cases other than homicide, the testimony of each witness must be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, if the justice holds the defendant to answer, he shall transmit immediately to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by him.

History: **En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(d); amd. Sec. 13, Ch. 116, L. 1979.**

CHAPTER 11

COMMENCEMENT OF PROSECUTION

Part 1 — Methods of Commencing Prosecution

Section
46-11-101. Methods of commencing prosecution.
46-11-102. When given methods required.

Part 2 — Filing of Information

46-11-201. Leave to file information.
46-11-202. Leave to file information — when defendant is district judge.
46-11-203. Time for filing information.
46-11-204. Procedure when county attorney decides not to file.

Part 3 — Grand Jury

46-11-301. Summoning grand juries — composition.
46-11-302. Objections to grand jury and to grand jurors.
46-11-303. Foreman — powers and duties.
Sections 46-11-304 through 46-11-310 reserved.
46-11-311. Charge by court.
46-11-312. Powers and duties of grand jury.
46-11-313. Subpoena of witnesses.
46-11-314. Reception of evidence.
46-11-315. Advice and assistance to grand jury — who may be present.
46-11-316. Stenographer — transcript of testimony.
46-11-317. Secrecy of proceedings and disclosure.
46-11-318. Discharging jury.
46-11-319. Expenses of grand jury.
Sections 46-11-320 through 46-11-330 reserved.
46-11-331. Finding an indictment.

46-11-332. Presenting the indictment.
46-11-333. Procedure regarding defendant.

Part 4 — The Charge

46-11-401. Form of charge.
46-11-402. Record of charge — certified copy.
46-11-403. Amending the charge.
46-11-404. Joinder and severance of offenses and defendants.
46-11-405. Discharge of codefendant.

Part 5 — Effect of Multiple Charges and Former Prosecutions

46-11-501. Definitions.
46-11-502. Prosecution when conduct constitutes more than one offense.
46-11-503. When prosecution based on same transaction barred by former prosecution.
46-11-504. Former prosecution in another jurisdiction — when a bar.
46-11-505. When former prosecution not a bar.

Part 6 — Ensuring Availability of Material Witness Preserving Testimony

46-11-601. Recognizance by or deposition of witness.

Part 1

Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution. When authorized by law, a prosecution may be commenced by:

(1) a complaint;

(2) an information following a preliminary examination or waiver thereof;

(3) an information after leave of court has been granted;

(4) an indictment upon a finding by a grand jury.

History: En. 95-1501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1501.

46-11-102. When given methods required. (1) All prosecutions of offenses triable in the district courts shall be by indictment or information.

(2) All other prosecutions of offenses may be by complaint.

History: En. 95-1502 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 184, L. 1977; R.C.M. 1947, 95-1502.

Part 2

Filing of Information

46-11-201. Leave to file information. (1) The county attorney may apply directly to the district court for permission to file an information against a named defendant. The application must be by affidavit supported by such evidence as the judge may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge shall grant leave to file the information, otherwise the application shall be denied.

(2) When there has been granted leave to file an information against the defendant, a warrant may issue for his arrest and he must be brought before the court unless the court orders otherwise.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(a), (b).

46-11-202. Leave to file information — when defendant is district judge. (1) If the person against whom an information is sought to be filed is a district court judge, the county attorney shall apply directly to the supreme court for permission to file the information. The supreme court shall then proceed in the manner provided in 46-11-201(1).

(2) When leave is granted by the supreme court, it shall designate and direct a judge of the district court of another district to preside at the trial of such information and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment. All necessary records shall be transferred to the clerk of the district court of the district in which the action arose.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(c).

46-11-203. Time for filing information. After the defendant has been examined and held to answer or has waived preliminary examination as provided in chapter 10 or after leave of court has been granted as provided in 46-11-201 and 46-11-202, the county attorney must file within 30 days in the proper district court an information charging the defendant with the offense for which he is held to answer or any other offense disclosed by the evidence. If the county attorney fails to file the information within the time specified, he may be found guilty of contempt and may be prosecuted for neglect of duty.

History: En. 95-1302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1302.

46-11-204. Procedure when county attorney decides not to file. If the county attorney determines an information ought not to be filed after the defendant has been held to answer following a preliminary examination or waiver thereof or after leave to file has been granted, he must within 30 days make, subscribe, and file with the clerk of the court a statement in writing containing his reasons in fact and in law for not filing an information. The court must examine such statements together with the evidence filed in the case, and if upon such examination the court is not satisfied with the statement, the county attorney shall be directed and required by the court to file the proper information and bring the case to trial.

History: En. 95-1303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1303.

Part 3

Grand Jury

46-11-301. Summoning grand juries — composition. (1) A grand jury must only be drawn and summoned when the district judge, in his discretion, considers a grand jury necessary and shall so order. The composition and drawing of a grand jury shall be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. If a member of the jury becomes unable to perform his duty, he may be replaced by an alternate.

History: En. 95-1401 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 3, L. 1973; R.C.M. 1947, 95-1401(part).

46-11-302. Objections to grand jury and to grand jurors. (1) The state may challenge the panel of a grand jury on the grounds that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges may be oral or in writing and shall be tried and decided by the court. At any time for cause shown the court may excuse or discharge a juror or jurors either temporarily or permanently, and in the latter event, the court may impanel another person or persons in place of the juror or jurors discharged.

(2) A motion to dismiss the indictment may be based on the grounds that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to 46-11-303 that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment.

History: En. 95-1402 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 3, L. 1973; R.C.M. 1947, 95-1402.

46-11-303. Foreman — powers and duties. The court shall appoint one of the jurors to be foreman. The foreman shall have the power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record shall not be made public except on order of the court.

History: En. 95-1403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1403.

46-11-304 through 46-11-310 reserved.

46-11-311. Charge by court. When the grand jury is impaneled and sworn, it shall be charged by the judge who summoned it. In doing so, the court shall give the grand jurors such information as it deems proper or as is required by law as to their duties and as to any charges of public offenses known to the court and likely to come before the grand jury.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(a).

46-11-312. Powers and duties of grand jury. (1) When the grand jury has been impaneled, sworn, and charged, it shall retire to a private room and inquire into the offenses cognizable by it. The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

(2) If a member of a grand jury knows or has reason to believe that a public offense triable within the county has been committed, he shall declare it to his fellow jurors, who shall thereupon investigate it.

(3) The grand jury may inquire into:

(a) the case of every person imprisoned in the jail of the county on a criminal charge and not indicted or against whom an information or complaint has not been filed;

(b) the condition and management of the public prisons within the county;

(c) the willful or corrupt misconduct in office of public officers of every description within the county.

(4) The grand jury is entitled to free access at all reasonable times to the public prisons and to the examination without charge of all public records within the county.

(5) If in the judgment of the grand jury the services of an expert are necessary, the grand jury may employ one or more at an agreed compensation to be first approved by the court. If in the judgment of the grand jury the services of assistants to such experts are required, the grand jury may employ such assistants at a compensation to be agreed upon and approved by the court.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part), 95-1405(a) thru (e).

46-11-313. Subpoena of witnesses. A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the foreman of the grand jury, or by the judge of the district court. The subpoena may be directed to witnesses in the state in support of the prosecution, those witnesses whose testimony, in the opinion of the issuer, is material in an investigation before the grand jury, and such other witnesses as the grand jury may direct.

History: En. 95-1407 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 16, Ch. 184, L. 1977; R.C.M. 1947, 95-1407.

46-11-314. Reception of evidence. (1) In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before it or furnished by legal documentary evidence or the deposition of a witness in the cases mentioned in chapter 15, part 2, of this title.

(2) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it. If it has reason to believe other evidence within its reach will explain away the charge, it shall order the evidence to be produced and for that purpose may require the county attorney to issue process for witnesses.

History: En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; R.C.M. 1947, 95-1408(1), (2).

46-11-315. Advice and assistance to grand jury — who may be present. (1) The grand jury may at all times ask the advice of the court or the judge thereof, the attorney general, or the county attorney. Unless such advice is asked, the judge of the court shall not be present during the sessions of the grand jury.

(2) The county attorney or the attorney general may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against

or involving the county attorney, deputy county attorney, or anyone employed by or connected with the office of the county attorney is being investigated by the grand jury, the county attorney, deputy county attorney, or all or any one or more of them shall not be allowed to be present in an official capacity before the grand jury when the charge is being investigated. They or he shall only be present while a witness and after appearing as a witness shall leave the place where the grand jury is holding session.

(3) When requested to do so by the grand jury of any county, the attorney general or county attorney may employ special counsel and investigators who shall investigate and present the evidence acquired in such investigation to the grand jury.

(4) The grand jury or county attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, the interpreter may be present at the examination of witnesses before the grand jury. The compensation for the services of the interpreter constitutes a charge against the county and shall be fixed by the grand jury in an amount to be approved by the court. It shall be paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(1) thru (4).

46-11-316. Stenographer — transcript of testimony. (1) The grand jury may appoint a stenographer to take in shorthand the testimony of witnesses, or the testimony may be taken by a recording device, but the record so made shall include the testimony of all witnesses on that particular investigation. The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court.

(2) The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court.

(3) The stenographic reporter shall certify and file with the clerk of the district court an original transcription of his shorthand notes and a copy thereof and as many additional copies as there are defendants. The reporter shall complete the certification and filing within 10 days after the indictment has been found unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript filed with him to the county attorney immediately upon his receipt thereof, retain one copy for use only by judges in proceedings relating to the indictment, and deliver a copy of the transcript to each defendant or his attorney.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(5).

46-11-317. Secrecy of proceedings and disclosure. (1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the county attorney for use in the performance of his duty. Otherwise a juror, attorney, interpreter, stenographer, or operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury under 46-11-302(2). No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(2) The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

History: En. 95-1409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1409.

46-11-318. Discharging jury. When the grand jury certifies completion of business before it and the court concurs, it shall be discharged by the court.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part).

46-11-319. Expenses of grand jury. All expenses of the grand jury, including special counsel and investigators, if any, shall be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor or the clerk of the district court upon the written order of the judge of the district court of the county.

History: En. 95-1405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1405(f).

46-11-320 through 46-11-330 reserved.

46-11-331. Finding an indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together, if unexplained or uncontradicted, would in its judgment warrant a conviction by a trial jury.

(2) An indictment cannot be found without the concurrence of at least eight grand jurors. When so found, it must be endorsed, "a true bill", and the endorsement must be signed by the foreman of the grand jury.

History: (1)En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; Sec. 95-1408, R.C.M. 1947; (2)En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; Sec. 95-1410, R.C.M. 1947; R.C.M. 1947, 95-1408(3), 95-1410(a).

46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be presented by their foreman in their presence to the court and must be filed with the clerk.

(2) When an indictment is filed against a district court judge, it must be transmitted directly to the supreme court, which shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(b).

46-11-333. Procedure regarding defendant. (1) When an indictment is found against a defendant, a warrant must issue for his arrest and he must be brought before the court unless the court orders otherwise.

(2) If the defendant is in custody or has given bail and eight jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(c), (d).

Part 4

The Charge

46-11-401. Form of charge. (1) A charge shall:

(a) be in writing and in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) specify the name of the court in which the charge is filed; and

(c) charge the commission of an offense by:

(i) stating the name of the offense;

(ii) citing in customary form the statute, rule, or other provision of law which the defendant is alleged to have violated;

(iii) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended;

(iv) stating the time and place of the offense as definitely as can be done; and

(v) stating the name of the accused, if known, and, if not known, designating the accused by any name or description by which he can be identified with reasonable certainty.

(2) If the charge is by information or indictment, it shall include endorsed thereon the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it shall be signed on oath by a person having knowledge of the facts or by the county attorney; if by information, it shall be signed by the county attorney or by his deputy; if by indictment, it shall be signed by the foreman of the grand jury.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(a) thru (e).

46-11-402. Record of charge — certified copy. If the charge is by information or indictment, it must be recorded by the clerk within 5 days after the same is filed in a book to be kept for that purpose. The judge must compare the record with the original indictment or information and certify the correctness thereof. In case the original is lost or destroyed, the defendant may be tried upon a copy taken from the record and certified by the clerk.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(f).

46-11-403. Amending the charge. (1) A charge may be amended once in matters of substance at any time not less than 5 days before trial without leave of court.

(2) The court may permit any charge to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(3) No charge shall be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant.

History: En. 95-1505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 431, L. 1977; R.C.M. 1947, 95-1505.

46-11-404. Joinder and severance of offenses and defendants. (1) An indictment, information, or complaint may charge two or more different offenses connected together in their commission, different statements of the same offense, or two or more different offenses of the same class under separate counts. If two or more indictments, informations, or complaints are filed in such cases in the same court, the court may order them to be consolidated. Allegations made in one count may be incorporated by reference in another count. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, or complaint, and the defendant may be convicted of any number of the offenses charged. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

(2) The court in which the case is triable, in the interests of justice and for good cause shown, may, in its discretion, order that the different offenses or counts set forth in the indictment, information, or complaint be tried separately or divided into two or more groups and each of the groups tried separately. An acquittal of one or more counts shall not be considered an acquittal of any other count.

(3) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

(4) If it appears that a defendant or the state is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial, the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

History: En. 95-1504 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(1) thru (4).

46-11-405. Discharge of codefendant. (1) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged so that he may be a witness for the state.

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, the court must order him to be discharged before the evidence is closed that he may be a witness for his codefendant.

History: En. Sec. 187, p. 245, Bannack Stat.; re-en. Sec. 308, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Rev. Stat. 1879; re-en. Sec. 309, 3d Div. Comp. Stat. 1887; amd. Secs. 2075, 2076, Pen. C. 1895; re-en. Secs. 9276, 9277, Rev. C. 1907; re-en. Secs. 11974, 11975, R.C.M. 1921; Cal. Pen. C. Secs. 1099, 1100; re-en. Secs. 11974, 11975, R.C.M. 1935; Secs. 94-7206, 94-7207, R.C.M. 1947; redes. 95-1504(d) and (e) by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(5), (6).

Part 5

Effect of Multiple Charges and Former Prosecutions

46-11-501. Definitions. (1) The term "same transaction" includes conduct consisting of:

(a) a series of acts or omissions which are motivated by a purpose to accomplish a criminal objective and which are necessary or incidental to the accomplishment of that objective; or

(b) a series of acts or omissions which are motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or persons or the property thereof.

(2) An offense is an "included offense" when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

History: **En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(1).**

46-11-502. Prosecution when conduct constitutes more than one offense. When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(1) one offense is included in the other;

(2) one offense consists only of a conspiracy or other form of preparation to commit the other;

(3) inconsistent findings of fact are required to establish the commission of the offenses;

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

History: **En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(2).**

46-11-503. When prosecution based on same transaction barred by former prosecution. If the offenses were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge and if the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside is an acquittal of the greater inclusive offense that was charged.

(2) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge or after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There has been a conviction whenever the prosecution resulted in:

(a) a judgment of conviction which has not been reversed or vacated;

(b) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(c) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(4) The former prosecution was improperly terminated. Except as provided in this subsection (4), there is an improper termination of a prosecution whenever the termination is for reasons not amounting to an acquittal and takes place after the first witness is sworn but before verdict. Termination under either of the following circumstances is not improper:

(a) The defendant consents to the termination or waives his right to object to the termination.

(b) The trial court, in the exercise of its discretion, finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct in or outside the courtroom makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(3).

46-11-504. Former prosecution in another jurisdiction — when a bar. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, overlapping, or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(1) The first prosecution resulted in an acquittal or in a conviction as defined in 46-11-503 and the subsequent prosecution is based on an offense arising out of the same transaction.

(2) The former prosecution was terminated, after the complaint had been filed on a misdemeanor charge or after the information had been filed or the

indictment found on a felony charge, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated; and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense for which the defendant is subsequently prosecuted.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(4).

46-11-505. When former prosecution not a bar. A prosecution is not a bar within the meaning of 46-11-503 and 46-11-504 under any one or more of the following circumstances:

(1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense.

(2) The former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed.

(3) The former prosecution resulted in a judgment of conviction which was held invalid in a postconviction hearing.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(5).

Part 6

Ensuring Availability of Material Witness Preserving Testimony

46-11-601. Recognizance by or deposition of witness. (1) If the defendant is held to answer after a preliminary examination or after the defendant has waived a preliminary examination or after the district court has granted leave to file an information or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written undertaking may be remanded to custody but shall not be held longer than is necessary to take his deposition. After the deposition is taken, the witness must be immediately discharged.

(3) Such deposition must be taken in the presence of the county attorney and the defendant and his counsel unless either the county attorney or the defendant and his counsel fail to attend after reasonable notice of the time and place set for taking the deposition.

History: En. 95-1204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1204.

CHAPTER 12

ARRAIGNMENT OF DEFENDANT

Part 1 — General Provisions

Section

46-12-101. Arraignment defined.
46-12-102. Place of arraignment.

46-12-103. Presence of defendant.
46-12-104. Bringing defendant into court.
46-12-105. Joint defendants.

Part 2 — Procedure on Arraignment

46-12-201. General rules of procedure for arraignment.
46-12-202. Court to advise defendant of his rights and the charges.
46-12-203. Time allowed to answer.
46-12-204. The plea.
46-12-205. Record of arraignment.
46-12-206. Irregularity of arraignment.

Part 1

General Provisions

46-12-101. Arraignment defined. "Arraignment" is the formal act of calling the defendant into open court to answer the charge against him.

History: En. 95-1601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1601.

46-12-102. Place of arraignment. The defendant shall be arraigned in the court in which the indictment, information, or complaint is filed unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

History: En. 95-1602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1602.

46-12-103. Presence of defendant. If the offense charged is a felony, the defendant must be personally present for arraignment. If the offense charged is a misdemeanor, he may appear by counsel.

History: En. 95-1603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1603.

46-12-104. Bringing defendant into court. The court may direct any official who has custody of the defendant to bring him before the court to be arraigned.

History: En. 95-1604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1604.

46-12-105. Joint defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

History: En. 95-1605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1605.

Part 2

Procedure on Arraignment

46-12-201. General rules of procedure for arraignment. The arraignment in any court in this state must be conducted in the following manner:

(1) The arraignment must be in open court.

(2) The court must inquire of the defendant or his counsel the defendant's true name, and if the defendant's true name be given as any other

than that used in the charge, the court must order the defendant's name to be substituted for the name under which he is charged. The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.

(3) The court must determine whether the defendant is under any disability which would prevent the court in its discretion from proceeding with the arraignment. The arraignment may be continued until such time as the court determines the defendant is able to proceed.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(a), (b), (c).

46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

(d) of the time prescribed by statute to enter a plea;

(e) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part).

46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions.

History: En. 95-1607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1607.

46-12-204. The plea. (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.

(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part).

46-12-205. Record of arraignment. The court must prepare and keep a written record of all arraignment proceedings. In district courts a verbatim record of all arraignment proceedings must be made, preserved, and filed with the court.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(f).

46-12-206. Irregularity of arraignment. No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to such irregularity.

History: En. 95-1608 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1608.

CHAPTER 13

PRETRIAL MOTIONS

Part 1 — General Provisions

Section

46-13-101. Defenses and objections which may be raised before trial.
46-13-102. Defenses and objections which must be raised before trial.
46-13-103. Time of making motion.
46-13-104. Time of hearing motion.
46-13-105. If motion disallowed, plea to be entered.
46-13-106. Effect of order of dismissal.

Part 2 — Specific Pretrial Motions

46-13-201. Dismissal at instance of court or prosecution.
46-13-202. Motion for continuance.
46-13-203. Change of place of trial.
46-13-204. Transfer of trial.

Part 3 — Suppression of Evidence

46-13-301. Motion to suppress confession or admission.
46-13-302. Motion to suppress evidence illegally seized.

Part 1

General Provisions

46-13-101. Defenses and objections which may be raised before trial. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion to dismiss or for other appropriate relief. The motion shall state with particularity the grounds therefor and the order or relief sought.

History: En. 95-1701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1701.

46-13-102. Defenses and objections which must be raised before trial. Defenses and objections based on defects in the institution of the prosecution or in the complaint, indictment, or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only before trial by motion to dismiss or for other appropriate relief. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment, information, or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

History: **En. 95-1702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1702.**

46-13-103. Time of making motion. The motion provided for in 46-13-101 and 46-13-102 shall be made before the plea is entered, but the court for cause may permit it to be made within a reasonable time thereafter.

History: **En. 95-1704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 22, Ch. 184, L. 1977; R.C.M. 1947, 95-1704.**

46-13-104. Time of hearing motion. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

History: **En. 95-1705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1705.**

46-13-105. If motion disallowed, plea to be entered. If a motion is determined adversely to the defendant, he shall plead if he has not previously pleaded. A plea previously entered shall stand.

History: **En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(1).**

46-13-106. Effect of order of dismissal. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom or, if admitted to bail, have his bail exonerated or money deposited instead of bail refunded to him. However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint or if it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment, or information.

History: **En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(2).**

Part 2

Specific Pretrial Motions

46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order an action, complaint, information, or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

History: **En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971; R.C.M. 1947, 95-1703.**

46-13-202. Motion for continuance. (1) The defendant or the state may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant. This section shall be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state to a speedy trial.

History: **En. 95-1708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1708.**

46-13-203. Change of place of trial. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county. The motion must be made at least 15 days prior to trial except that, if good cause is shown, it may be made thereafter.

(2) The motion must be in writing and supported by an affidavit which must state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, it shall transfer the cause to any other court of competent jurisdiction in any county in which a fair trial may be had.

History: **En. 95-1710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1710; amd. Sec. 14, Ch. 116, L. 1979.**

46-13-204. Transfer of trial. If the court determines that a motion to dismiss based upon the grounds of lack of jurisdiction or improper place of trial is well-founded, it may, instead of ordering dismissal, order the cause transferred to a court of competent jurisdiction or to a proper place of trial.

History: **En. 95-1707 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 184, L. 1977; R.C.M. 1947, 95-1707.**

Part 3

Suppression of Evidence

46-13-301. Motion to suppress confession or admission. (1) A defendant may move to suppress as evidence any confession or admission given by him on the ground that it was not voluntary. The motion shall be in writing and state facts showing wherein the confession or admission was involuntary.

(2) The motion shall be made before the trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which, if true, show that the confession or admission was not voluntarily made, the court shall conduct a hearing into the merits of the motion. The burden of proving that a confession or admission was involuntary shall be on the defendant.

(5) The issue of the admissibility of the confession or admission shall not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(6) If the motion is granted, the confession or admission shall not be admissible in evidence against the movant at the trial of the case.

History: En. 95-1805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1805.

46-13-302. Motion to suppress evidence illegally seized. (1) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything so obtained. The motion shall be in writing and state facts showing wherein the search and seizure were unlawful.

(2) The motion shall be made before trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which if true show that the search and seizure were unlawful, the court shall conduct a hearing into the merits of the motion. The burden of proving that the search and seizure were unlawful shall be on the defendant.

(5) If the motion is granted, the evidence shall not be admissible against the movant at any trial of the case.

History: En. 95-1806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1806.

CHAPTER 14

MENTAL COMPETENCY OF ACCUSED

Part 1 — Relevance of Mental Disease or Defect

Section

46-14-101. Mental disease or defect.
46-14-102. Evidence of mental disease or defect admissible to prove state of mind.
46-14-103. Mental disease or defect excluding fitness to proceed.

Part 2 — Procedure When Mental Disease or Defect an Issue

46-14-201. Requirement of notice — form of verdict and judgment.
46-14-202. Psychiatric examination of defendant.
46-14-203. Report of the examination.
Sections 46-14-204 through 46-14-210 reserved.
46-14-211. Repealed. Sec. 15, Ch. 713, L. 1979.
46-14-212. Examination by psychiatrist chosen by state or defendant.
46-14-213. Psychiatric testimony upon trial.
Sections 46-14-214 through 46-14-220 reserved.

46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.
46-14-222. Proceedings if fitness regained.

Part 3 — Disposition of Defendant

46-14-301. Commitment upon acquittal on the ground of lack of mental state — hearing to determine release or discharge.
46-14-302. Discharge or release upon motion of superintendent.
46-14-303. Application for discharge or release by committed person.
46-14-304. Recommitment after conditional release.
Sections 46-14-305 through 46-14-310 reserved.
46-14-311. Consideration of mental disease or defect in sentencing.
46-14-312. Sentence to be imposed.
46-14-313. Discharge of defendent from supervision.

Part 4 — Privileged Communications

46-14-401. Admissibility of statements made during examination or treatment.

Part 1

Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect. As used in this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial conduct.

History: En. 95-501 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 184, L. 1977; R.C.M. 1947, 95-501; amd. Sec. 1, Ch. 713, L. 1979.

46-14-102. Evidence of mental disease or defect admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

History: En. 95-502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-502.

46-14-103. Mental disease or defect excluding fitness to proceed. No person who, as a result of mental disease or defect, is unable to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

History: En. 95-504 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-504.

Part 2

Procedure When Mental Disease or Defect an Issue

46-14-201. Requirement of notice — form of verdict and judgment. (1) Evidence of mental disease or defect is not admissible in a trial on the merits unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on a mental disease or defect to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief expert testimony in support of that defense.

(2) When the defendant is acquitted on the ground that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment shall so state.

History: En. 95-503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-503; amd. Sec. 2, Ch. 713, L. 1979.

46-14-202. Psychiatric examination of defendant. (1) When there is reason to doubt the defendant's fitness to proceed or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist or shall request the superintendent of Warm Springs state hospital to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(1), (2); amd. Sec. 3, Ch. 713, L. 1979.

46-14-203. Report of the examination. (1) The report of the examination shall include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant;

(c) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; and

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(3) thru (5); amd. Sec. 4, Ch. 713, L. 1979.

46-14-204 through 46-14-210 reserved.

46-14-211. Repealed. Sec. 15, Ch. 713, L. 1979.

46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(2); amd. Sec. 5, Ch. 713, L. 1979.

46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist was designated by the court or by the superintendent of Warm Springs state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(3), (4); amd. Sec. 6, Ch. 713, L. 1979.

46-14-214 through 46-14-220 reserved.

46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may only be raised by the defendant with the advice of counsel. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate

institution of the department of institutions for so long as the unfitness endures.

(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled, as defined by 53-20-102, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall proceed to secure treatment as provided in chapter 20, part 1, or chapter 21, part 1, of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are in the first instance chargeable to the county in which the indictment was found or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 7, Ch. 713, L. 1979.

46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of institutions, the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of institutions.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 8, Ch. 713, L. 1979.

Part 3

Disposition of Defendant

46-14-301. Commitment upon acquittal on the ground of lack of mental state — hearing to determine release or discharge. (1) When a defendant is acquitted on the ground that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

(2) A person so confined shall have a hearing, unless waived, within 50 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his

counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(3) According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(1); amd. Sec. 9, Ch. 713, L. 1979.

46-14-302. Discharge or release upon motion of superintendent. (1) If the superintendent of Warm Springs state hospital believes that a person committed to his custody under 46-14-301 may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the county attorney of the county from which the defendant was committed.

(2) The court shall then appoint at least two qualified psychiatrists to examine the person and to report their opinion as to his mental condition within 60 days or a longer period which the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings thereon, the court may have the person confined in any institution located near the place where the court sits which may hereafter be designated by the superintendent of Warm Springs state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) of this section and the testimony of the reporting psychiatrists which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall then be discharged or released on conditions which the court determines to be necessary or shall be recommitted to the custody of the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the procedures prescribed in this section and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(2), (3); amd. Sec. 15, Ch. 116, L. 1979.

46-14-303. Application for discharge or release by committed person. A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon the application is the same as that prescribed above in the case of an application by the superintendent of Warm Springs state hospital.

However, an application by a committed person need not be considered until he has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person shall not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for his release or discharge.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(5).

46-14-304. Recommitment after conditional release. If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the procedures prescribed in 46-14-302 and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(4); amd. Sec. 16, Ch. 116, L. 1979.

46-14-305 through 46-14-310 reserved.

46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was suffering from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

History: En. Sec. 10, Ch. 713, L. 1979.

46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in 46-14-311, it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent

with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

History: **En. Sec. 11, Ch. 713, L. 1979.**

46-14-313. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312(2), the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

History: **En. Sec. 12, Ch. 713, L. 1979.**

Part 4

Privileged Communications

46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under 46-14-311, on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under 46-14-311, the court may hear and consider any such statement even if it constitutes an admission of guilt.

History: **En. 95-509 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 5, Ch. 184, L. 1977; R.C.M. 1947, 95-509; amd. Sec. 13, Ch. 713, L. 1979.**

CHAPTER 15

PRODUCTION OF EVIDENCE

Part 1 — Subpoenas and Witnesses

Section
46-15-101. Subpoenas.
46-15-102. Service of subpoenas.
46-15-103. Indigent defendants.
46-15-104. Expenses of witness.
46-15-105. Persons imprisoned in state prison or in another county.
Sections 46-15-106 through 46-15-110 reserved.
46-15-111. Definitions.
46-15-112. Summoning witness in this state to testify in another state.
46-15-113. Witness from another state summoned to testify in this state.
46-15-114. Exemption from arrest and service of process.

Part 2 — Depositions

46-15-201. When depositions taken.
46-15-202. Procedure for taking depositions — filing.
46-15-203. Additional requirements when initiated by state or witness.
46-15-204. Use of depositions at trial.

Part 3 — Discovery—Immunity for Witnesses

46-15-301. Discovery of witnesses, notice of certain defenses.
46-15-302. Discovery of writings and objects.
46-15-303. Motion to produce confession or admission.
Sections 46-15-304 through 46-15-310 reserved.
46-15-311. Compelling testimony or production of evidence — immunity.
46-15-312. Privileged matters.

Part 4 — Evidence in Involving Sexual Offenses Cases

46-15-401. When videotaped testimony admissible.
46-15-402. Procedure at videotaping.
46-15-403. Court order to protect privacy of victim.
Sections 46-15-404 through 46-15-410 reserved.
46-15-411. Payment for medical evidence.

Part 1

Subpoenas and Witnesses

46-15-101. Subpoenas. Upon the request of the prosecuting attorney or the defendant or his attorney, the court or the clerk of the court shall issue subpoenas. The subpoena shall state the name of the court and the title, if any, of the proceeding and shall command each person to whom it is directed to attend and give testimony and produce objects and documents at the time and place specified therein.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(a).

46-15-102. Service of subpoenas. (1) A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. A peace officer must serve in his county any subpoena delivered to him for service either on the part of the state or of the defendant.

(2) Service of a subpoena shall be made by delivering a copy thereof to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed by law. The person making the service must without delay make a written return of the service subscribed by him stating the time and place of service.

(3) A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the state of Montana.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(e), (f).

46-15-103. Indigent defendants. When the defendant is indigent, a court order must be obtained if more than six witnesses are to be subpoenaed. If a witness is to be paid more than the regular fee or there are more than six witnesses to be paid, an order of the court or judge is needed. Such order may be made upon proper showing by affidavit or otherwise.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(b).

46-15-104. Expenses of witness. When a person attends before a magistrate, grand jury, or court as a witness in a criminal case upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

History: **En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(c).**

46-15-105. Persons imprisoned in state prison or in another county. When it is necessary to have a person imprisoned in the state prison brought before any court or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made.

History: **En. Sec. 2900, Pen. C. 1895; re-en. Sec. 9714, Rev. C. 1907; re-en. Sec. 12432, R.C.M. 1921; Cal. Pen. C. Sec. 1567; re-en. Sec. 12432, R.C.M. 1935; Sec. 94-701-1, R.C.M. 1947; redes. 95-1812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1812.**

46-15-106 through 46-15-110 reserved.

46-15-111. Definitions. (1) "Witness", as used in 46-15-112 through 46-15-114, shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(2) The word "state" shall include any territory of the United States and the District of Columbia.

History: **En. 95-1808 by Sec. 8, Ch. 513, L. 1973; R.C.M. 1947, 95-1808.**

46-15-112. Summoning witness in this state to testify in another state. (1) If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his

attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing. The judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(4) If the witness who is summoned as provided in this section, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 2, Ch. 188, L. 1937; Sec. 94-9002, R.C.M. 1947; redes. 95-1809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1809.

46-15-113. Witness from another state summoned to testify in this state. (1) Whenever a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, it is prima facie proof of the desirability of such custody and delivery and the judge may direct that the witness be brought before him immediately. If the judge is satisfied as to the desirability of such custody and delivery, he may order that the witness be immediately taken into custody and delivered to an officer of this state. The order is sufficient authority for the officer to take the witness into custody and hold him unless and until he is released by bail, recognizance, or order of the judge issuing the certificate.

(3) Whenever a witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness. If the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount in excess of the amount specified in the preceding sentence, the witness may be tendered the amount required by that state.

(4) A witness who has appeared in accordance with the provisions of the summons may not be required to remain within this state for a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

(5) If the witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for

the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949; Sec. 94-9003, R.C.M. 1947; redes. 95-1810 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 27, Ch. 184, L. 1977; R.C.M. 1947, 95-1810.

46-15-114. Exemption from arrest and service of process. (1) If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not, while in this state pursuant to such summons or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons or order to attend and testify in that state or while returning therefrom, he shall not, while so passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons or order.

History: En. Sec. 4, Ch. 188, L. 1937; Sec. 94-9004, R.C.M. 1947; redes. 95-1811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1811.

Part 2

Depositions

46-15-201. When depositions taken. (1) If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing or is or may become a nonresident of the state or is unwilling to provide relevant information to a requesting party and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court, at any time after the preliminary hearing or the filing of the indictment or the information, may upon motion and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place.

(2) If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court must direct that his deposition be taken at the expense of the state. After the deposition has been subscribed, the court shall discharge the witness.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(a).

46-15-202. Procedure for taking depositions — filing. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(2) A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(3) The court shall transmit the deposition to the clerk of the court making the order, there to be filed and held until the action shall come on for trial.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(b) thru (d).

46-15-203. Additional requirements when initiated by state or witness. The following additional requirements shall apply if the deposition is taken at the instance of the state or a witness:

(1) The officer having custody of a defendant shall be notified of the time and place set for examination and keep him in the presence of the witness during the examination.

(2) A defendant not in custody shall be given notice and shall have the right to be present at the examination.

(3) The state shall pay to the defendant's attorney and to a defendant not in custody expenses of travel and subsistence for attendance at the examination.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(g).

46-15-204. Use of depositions at trial. (1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that:

(a) the witness is dead;

(b) the witness is out of the state of Montana unless it appears that the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of sickness or infirmity; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(2) Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(3) If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(4) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(5) For the purposes of this section, the word "deposition" shall in addition include any sworn testimony previously given by a witness which has been recorded and transcribed by a qualified stenographer and given in the presence of the defendant and cross-examined by him or his attorney on matters relevant to the trial or hearing where such deposition is sought to be used.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(e), (f).

Part 3

Discovery — Immunity for Witnesses

46-15-301. Discovery of witnesses, notice of certain defenses. In all criminal cases originally triable in district court, the following rules apply:

(1) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court at the time of arraignment a list of the witnesses the prosecution intends to call. The prosecution may, any time after arraignment, add to the list the names of any additional witnesses upon a showing of good cause. The list shall include the names and addresses of the witnesses. This subsection does not apply to rebuttal witnesses.

(2) (a) For purpose of notice only and to prevent surprise, the defendant shall furnish to the prosecution and file with the clerk of the court, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, a statement of intention to interpose the defense of self-defense or alibi or the defense that the defendant did not have a particular state of mind that is an essential element of the offense charged.

(b) If the defendant intends to interpose any of these defenses, he shall also furnish to the prosecution and file with the clerk of the court the names and addresses of all witnesses to be called by the defense in support thereof. Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list, except upon good cause shown.

History: En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(1), (3); amd. Sec. 14, Ch. 713, L. 1979.

46-15-302. Discovery of writings and objects. In all criminal cases originally triable in the district court, the following rules shall apply:

(1) Upon motion of either party and upon showing of good cause, the court may issue a subpoena prior to the trial directing any person other than the defendant to produce books, statements, papers, and objects before the court at a time prior to the trial or prior to the time when they are to be offered in evidence. Upon their production, the court may permit the books, statements, papers, objects, or portions thereof to be inspected, copied, or photographed by the parties and their attorneys.

(2) Upon motion of the defendant within a reasonable time before trial, the court may, upon a showing of good cause, order the prosecution to produce, prior to trial at a time and place designated by the court, for inspection, photographing, or copying by the defendant designated books, statements, papers, or objects obtained from the defendant or others by the prosecution which are material, relevant, and necessary to the preparation of the defendant's case. This subsection does not apply to the work product of the prosecution, which is documents drawn up by law enforcement officials for internal communications and law enforcement officers' field notes, except that any exculpatory information contained in such documents or notes must be produced.

(3) (a) On motion of any party within a reasonable time before trial, each party shall produce at a reasonable time and place designated by the court all documents, papers, or things which it intends to introduce in evidence. Each party shall be permitted to inspect or copy, in the presence of a person designated by the court, any such documents, papers, or things. The order

shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just. If the evidence relates to scientific tests or experiments, the opposing party shall, if practicable, be permitted to be present during the tests and to inspect the results thereof. Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred or make other appropriate orders.

(b) If, subsequent to compliance with an order issued pursuant to this rule and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. The court shall exclude any evidence not presented for inspection or copying pursuant to this rule unless good cause is shown for failure to comply. In the latter case the opposing party is entitled to a recess or a continuance during which it may inspect or copy the evidence in the manner provided for in this subsection (3).

History: **(1), (2)En. 95-1801 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1801, R.C.M. 1947; (3)En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; Sec. 95-1803, R.C.M. 1947; R.C.M. 1947, 95-1801(d), 95-1803(2); amd. Sec. 1, Ch. 496, L. 1979.**

46-15-303. Motion to produce confession or admission. (1) On motion of a defendant in any criminal case made prior to trial, the court shall order the state to furnish the defendant with a copy of any written confession or admission and a list of the witnesses to its making. If the defendant has made an oral confession or admission, a list of the witnesses to its making shall be furnished.

(2) The list of witnesses may, upon notice and motion, be amended by the state prior to trial.

(3) No such confession or admission shall be received in evidence which has not been furnished in compliance with subsection (1) unless the court is satisfied that the prosecutor was unaware of the existence of such confession or admission prior to trial and that he could not have become aware of such in the exercise of due diligence.

History: **En. 95-1804 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1804.**

46-15-304 through 46-15-310 reserved.

46-15-311. Compelling testimony or production of evidence — immunity. Before or during trial in any judicial proceeding, a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, he cannot be prosecuted or subjected to any penalty or forfeiture, other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter, or thing concerning which he testified or produced evidence.

History: **En. 95-1807 by Sec. 7, Ch. 513, L. 1973; R.C.M. 1947, 95-1807.**

46-15-312. Privileged matters. All matters which are privileged upon the trial are privileged against disclosure through any discovery procedure.

History: **En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(4).**

Part 4

Evidence in Involving Sexual Offenses Cases

46-15-401. When videotaped testimony admissible. For any prosecution commenced under 45-5-502(3) or 45-5-503, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

History: En. 95-1814 by Sec. 1, Ch. 384, L. 1977; R.C.M. 1947, 95-1814; amd. Sec. 1, Ch. 151, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 151, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

46-15-402. Procedure at videotaping. (1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by this part.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under this part shall be allowed to attend the videotape proceedings.

History: En. 95-1815 by Sec. 2, Ch. 384, L. 1977; R.C.M. 1947, 95-1815.

46-15-403. Court order to protect privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: En. 95-1816 by Sec. 3, Ch. 384, L. 1977; R.C.M. 1947, 95-1816.

46-15-404 through 46-15-410 reserved.

46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

History: En. 95-1813 by Sec. 1, Ch. 128, L. 1977; R.C.M. 1947, 95-1813.

CHAPTER 16

TRIAL IN DISTRICT COURT

Part 1 — General Provisions

Section

46-16-101. Who given precedence on calendar.
46-16-102. Right to jury trial — waiver.

46-16-103. Who decides questions of law and fact.
46-16-104. Plea of not guilty.
46-16-105. Plea of guilty.
46-16-106. Time to prepare for trial.
46-16-107. Failure of county attorney to attend.
46-16-108. Presence of defendant — mistrial for absence.

Part 2 — Rules of Evidence for Criminal Cases

46-16-201. Applicability of civil rules.
46-16-202. Evidence on trial for treason.
46-16-203. Burden of the state in homicide trial.
Sections 46-16-204 through 46-16-210 reserved.
46-16-211. Who are competent witnesses.
46-16-212. Competency of spouses.
46-16-213. Testimony of person legally accountable.

Part 3 — Selecting the Jury

46-16-301. Formation of trial jury.
46-16-302. Motion to discharge jury panel.
46-16-303. Examination of prospective jurors.
46-16-304. Challenges for cause.
46-16-305. Peremptory challenges.
46-16-306. Time for challenges.
46-16-307. Alternate jurors.

Part 4 — Order of Trial

46-16-401. Order of trial.
46-16-402. When order may be departed from.
46-16-403. Evidence insufficient to go to jury.

Part 5 — Conduct of Jury

46-16-501. Conduct of jury during trial.
46-16-502. View of relevant place or property.
46-16-503. Conduct of jury after retirement — advice from court.
46-16-504. Items which may be taken into the jury room.
46-16-505. Activity of court during jury's absence.

Part 6 — Verdict—Disposition of Defendant

46-16-601. Defendant presumed innocent — reasonable doubt.
46-16-602. Reasonable doubt as to which offense convicts only of least offense.
46-16-603. Form of verdict.
46-16-604. Poll of jury.
46-16-605. Acquittal — when defendant discharged.

Part 7 — Motion for a New Trial

46-16-701. Definition and effect of a new trial.
46-16-702. Motion for a new trial.

Part 1

General Provisions

46-16-101. Who given precedence on calendar. Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants on bail unless for good cause the court shall direct an action to be tried out of its order.

History: En. 95-1906 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1906.

46-16-102. Right to jury trial — waiver. (1) Defendants in all criminal cases shall have a right to trial by jury not to exceed 12 in number. The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12.

(2) Upon written consent of the parties, a trial by jury may be waived.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(c), (d).

46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty.

(2) Questions of law must be decided by the court and questions of fact by the jury except that on a trial for criminal defamation the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-102(2).

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(a), (b); amd. Sec. 17, Ch. 116, L. 1979.

46-16-104. Plea of not guilty. The plea of not guilty puts in issue every material allegation of the indictment, information, or complaint.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(e).

46-16-105. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(2) At any time before or after judgment the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

History: En. 95-1902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1902.

46-16-106. Time to prepare for trial. After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

History: En. 95-1907 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1907.

46-16-107. Failure of county attorney to attend. If the county attorney fails to attend the trial, the court may appoint some attorney-at-law to perform his duties.

History: En. 95-1903 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1903.

46-16-108. Presence of defendant — mistrial for absence. (1) The defendant must be personally present at the trial and rendition of judgment in all cases tried in the district court. If the defendant fails to appear at any time during the course of the trial and before the jury has retired for its deliberations or the case has been finally submitted to the judge and if after the exercise of reasonable diligence his presence cannot be procured, the court shall declare a mistrial and the cause may again be tried.

(2) In all cases appealed to the supreme court, it shall be conclusively deemed that the defendant was present in court at all stages of the trial unless the record on appeal affirmatively shows to the contrary.

History: En. 95-1904 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part).

Part 2

Rules of Evidence for Criminal Cases

46-16-201. Applicability of civil rules. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

History: En. Sec. 2078, Pen. C. 1895; re-en. Sec. 9279, Rev. C. 1907; re-en. Sec. 11977, R.C.M. 1921; Cal. Pen. C. Sec. 1102; re-en. Sec. 11977, R.C.M. 1935; Sec. 94-7209, R.C.M. 1947; redes. 95-3001 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3001.

46-16-202. Evidence on trial for treason. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act or upon confession in open court, nor can evidence be admitted of an overt act not expressly charged in the indictment or information, nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

History: En. Sec. 169, p. 243, Bannack Stat.; re-en. Sec. 294, p. 235, Cod. Stat. 1871; re-en. Sec. 294, 3d Div. Rev. Stat. 1879; re-en. Sec. 295, 3d Div. Comp. Stat. 1887; en. Sec. 2079, Pen. C. 1895; re-en. Sec. 9280, Rev. C. 1907; re-en. Sec. 11978, R.C.M. 1921; Cal. Pen. C. Sec. 1103; re-en. Sec. 11978, R.C.M. 1935; Sec. 94-7210, R.C.M. 1947; redes. 95-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3002.

46-16-203. Burden of the state in homicide trial. (1) In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death and the fact that the death was caused by a criminal agency.

(2) In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances of mitigation, excuse, or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004.

46-16-204 through 46-16-210 reserved.

46-16-211. Who are competent witnesses. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

History: En. Sec. 2440, Pen. C. 1895; re-en. Sec. 9482, Rev. C. 1907; re-en. Sec. 12175, R.C.M. 1921; Cal. Pen. C. Sec. 1321; re-en. Sec. 12175, R.C.M. 1935; Sec. 94-8801, R.C.M. 1947; redes. 95-3010 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3010.

46-16-212. Competency of spouses. Except with the consent of both or in cases of criminal violence by one upon the other, abandonment or neglect of children by either party, or abandonment or neglect of one by the other, neither spouse is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties.

History: En. Sec. 2441, Pen. C. 1895; re-en. Sec. 9483, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1915; re-en. Sec. 12176, R.C.M. 1921; Cal. Pen. C. Sec. 1322; re-en. Sec. 12176, R.C.M. 1935; Sec.

94-8802, R.C.M. 1947; redes. 95-3011 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 50, Ch. 184, L. 1977; R.C.M. 1947, 95-3011.

46-16-213. Testimony of person legally accountable. A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in 45-2-301, unless the testimony is corroborated by other evidence which in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

History: En. 95-3012 by Sec. 13, Ch. 513, L. 1973; amd. Sec. 51, Ch. 184, L. 1977; R.C.M. 1947, 95-3012.

Part 3

Selecting the Jury

46-16-301. Formation of trial jury. (1) Trial juries for criminal actions are formed in the same manner as trial juries in civil actions, except that the total number of jurors drawn shall be at least 12 plus the total number of peremptory challenges.

(2) The qualifications of jurors and exemptions from jury duty are prescribed in Title 3, chapter 15, part 3.

History: (1)En. 95-1905 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1905, R.C.M. 1947; (2)En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; Sec. 95-1909, R.C.M. 1947; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1905, 95-1909(2)(a).

46-16-302. Motion to discharge jury panel. (1) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least 5 days prior to the term for which the jury is drawn. For good cause shown, the court may entertain the motion at any time thereafter.

(2) The motion shall be in writing supported by affidavit and shall state facts which show that the jury panel was improperly selected or drawn.

(3) If the motion states facts which show that the jury panel has been improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant.

(4) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

History: En. 95-1908 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1908.

46-16-303. Examination of prospective jurors. (1) The clerk of court shall make available to the parties a list of prospective jurors with their addresses when the names have been drawn.

(2) The county attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(1), (3).

46-16-304. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason which the court determines:

(a) consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution;

(d) having served on the grand jury which found the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury which tried another person for the offense charged;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having such conscientious opinions as would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged;

(j) having a state of mind in reference to the case or to either of the parties which would prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An exemption from service on a jury is not a cause of challenge but the privilege of the person exempted.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(2)(b), (4).

46-16-305. Peremptory challenges. Each defendant shall be allowed eight peremptory challenges in capital cases, six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information. If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight. The state shall be allowed the same number of peremptory challenges as all of the defendants. In a criminal case tried in the district court before a six-person jury, the state and all the defendants shall be allowed three peremptory challenges each. When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(6).

46-16-306. Time for challenges. All challenges must be interposed before the jury is sworn unless the cause of challenge is discovered after the jury is sworn and before the introduction of any evidence, in which case the court, in its discretion, may allow the challenge to be interposed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(5).

46-16-307. Alternate jurors. (1) After the jury is impaneled and sworn, the court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

(2) Each party shall have one additional peremptory challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the jury in its deliberation unless called upon by the court to replace a member of the jury. His conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(7).

Part 4

Order of Trial

46-16-401. Order of trial. (1) The court may instruct the jury as to its duties. Such general instructions must be settled in the same manner as provided for the settlement of special instructions in subsection (4) of this section.

(2) The county attorney must state the case and offer evidence in support of the prosecution. The defendant may make his opening statement prior to the state's offer of evidence or may state his defense and then offer evidence in support thereof after the state rests.

(3) The parties may then respectively offer rebutting testimony only unless the court for good cause permits them to offer evidence upon their original case.

(4) (a) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, signed by the party or his attorney, and delivered to the court.

(b) The instructions shall be settled by the court without the presence of the jury. At the settlement counsel for the parties or the defendant, if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court and to present and argue to the court objections to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of instructions, the respective counsel or the parties shall specify and state the particular ground on which an instruction is objected to. It shall not be sufficient to object generally that the instruction does not state the law or is against the law, but the objection must specify particularly wherein the instruction is insufficient or does not state the law or what particular clause therein is objected to.

(c) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed, positively refuse to do so, or give the instruction with modification. The court shall mark or endorse upon each instruction in such a manner that it shall distinctly appear what instructions were given in whole or in part and, in like manner, those refused or modified and, if modified, wherein and how modified. All instructions must be filed as a part of the record of the cause. No exceptions are necessary to the rulings of the court on the settlement of instructions.

(d) The court reporter shall be present at such settlement and shall take down all the objections to any or all of the instructions given or refused by the court together with modifications made therein and the ruling of the court thereon.

(5) When the instructions have been passed upon and settled by the court and before the arguments to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as have been passed upon and settled. In charging the jury, the court shall give them all matters of law which it thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge or jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case.

History: En. 95-1910 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 420, L. 1975; R.C.M. 1947, 95-1910.

46-16-402. When order may be departed from. When the state of the pleading requires it or in any other case for good reasons and in the discretion of the court, the order prescribed in 46-16-401 may be departed from.

History: En. 95-1911 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1911.

46-16-403. Evidence insufficient to go to jury. When, at the close of the state's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may, on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, the court may allow the case to be reopened for good cause shown.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(9).

Part 5

Conduct of Jury

46-16-501. Conduct of jury during trial. (1) The jurors sworn to try an action may at any time before the submission of the case, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them or to do so himself on any subject connected with the trial, and to return them into court at the next meeting thereof.

(2) (a) The jury must also at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to them.

(b) In all cases appealed to the supreme court, it shall be conclusively deemed that the court or judge gave the proper admonition in accordance with the provision of subsection (2)(a) unless the record affirmatively shows to the contrary.

History: En. 95-1904, 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part), 95-1913(a), (e).

46-16-502. View of relevant place or property. When the court deems it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff to view said place or personal property in the presence of the defendant and his counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the same. The sheriff or bailiff must be sworn to suffer no person to speak or otherwise communicate with the jury or to do so himself on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct.

History: En. 95-1912 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1912.

46-16-503. Conduct of jury after retirement — advice from court. (1) When the jury retires to consider its verdict, an officer of the court must be appointed to keep the jurors together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. When the jurors are brought into court, the information requested may be given in the discretion of the court. If such information is given, it must be given in the presence of the county attorney and the defendant and his counsel.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(b), (d); amd. Sec. 18, Ch. 116, L. 1979.

46-16-504. Items which may be taken into the jury room. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in his possession. The jury may also take with them any exhibits which the court may deem proper and notes of the proceedings taken by themselves.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(c).

46-16-505. Activity of court during jury's absence. While the jury is absent, the court may adjourn from time to time as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

History: En. 95-1914 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1914.

Part 6

Verdict — Disposition of Defendant

46-16-601. Defendant presumed innocent — reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 307, 3d Div. Rev. Stat. 1879; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2072, Pen. C. 1895; re-en. Sec. 9273, Rev. C. 1907; re-en. Sec. 11971, R.C.M. 1921; Cal. Pen. C. Sec. 1096; re-en. Sec. 11971, R.C.M. 1935; Sec. 94-7203, R.C.M. 1947; redes. 95-2901 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2901.

46-16-602. Reasonable doubt as to which offense convicts only of least offense. When it appears beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he is guilty of a given offense or one or more lesser included offenses, he may only be convicted of the greatest included offense about which there is no reasonable doubt.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2073, Pen. C. 1895; re-en. Sec. 9274, Rev. C. 1907; re-en. Sec. 11972, R.C.M. 1921; Cal. Pen. C. Sec. 1097; re-en. Sec. 11972, R.C.M. 1935; Sec. 94-7204, R.C.M. 1947; redes. 95-2902 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 48, Ch. 184, L. 1977; R.C.M. 1947, 95-2902.

46-16-603. Form of verdict. (1) The jury shall return a general verdict to each offense charged. The verdict must be unanimous in all criminal actions. The verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; Sec. 95-1909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; Sec. 95-1915, R.C.M. 1947; R.C.M. 1947, 95-1909(8), 95-1915(1) thru (3).

46-16-604. Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

History: En. 95-1915 by Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; R.C.M. 1947, 95-1915(4).

46-16-605. Acquittal — when defendant discharged. If judgment of acquittal is given on a general verdict and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given except, where the acquittal is because of a variance between the pleading and proof which may be obviated by a new indictment or information, the court may order his detention to the end that a new indictment or information may be filed by the county attorney.

History: En. 95-1916 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1916.

Part 7

Motion for a New Trial

46-16-701. Definition and effect of a new trial. A "new trial" is a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered. The granting of a new trial places the parties in the same position as if there had been no trial.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(1).

46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial must be in writing and must specify the grounds therefor. It must be filed by the defendant within 30 days following a verdict or finding of guilty. Reasonable notice of the motion must be served on the state.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(2); amd. Sec. 19, Ch. 116, L. 1979.

CHAPTER 17

LOWER COURT PROCEEDINGS

Part 1 — Preliminary Matters
Justices' and City Courts

Section
46-17-101. Initiation of proceedings.
46-17-102. Record of proceedings.
46-17-103. Change of place of trial.

Part 2 — The Trial—Justices' and City Courts

46-17-201. Trial by jury.
46-17-202. Formation of trial jury.
46-17-203. Plea of guilty.

46-17-204. Time to prepare for trial.
46-17-205. Presence of defendant.
Sections 46-17-206 through 46-17-210 reserved.
46-17-211. Verdict.

**Part 3 — Procedure After Trial
Justices' and City Courts**

46-17-301. Sentence and judgment.
46-17-302. Execution of judgment.
46-17-303. Deposit of fines.
46-17-304. Disposition of fines for city ordinance violations when appealed.
Sections 46-17-305 through 46-17-310 reserved.
46-17-311. Appeal.

Part 4 — Procedure in Municipal Court

46-17-401. Applicability of district court rules.
46-17-402. Fees and fines.
46-17-403. Jury trial.
46-17-404. Appeals.

Part 1

Preliminary Matters — Justices' and City Courts

46-17-101. Initiation of proceedings. In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

History: En. 95-2001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2001.

46-17-102. Record of proceedings. A docket must be kept by the justice of the peace or city judge, in which must be entered each action and the proceedings of the court therein.

History: En. 95-2002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2002.

46-17-103. Change of place of trial. (1) The defendant or prosecution may move before trial for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county.

(2) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county where the prosecution is pending such prejudice that a fair trial cannot be had, it shall transfer the cause to any other court of competent jurisdiction in any county where a fair trial may be had.

History: En. 95-2003 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 420, L. 1975; R.C.M. 1947, 95-2003.

Part 2

The Trial — Justices' and City Courts

46-17-201. Trial by jury. (1) The defendant is entitled to a jury of six qualified persons, but the parties may agree to a number less than six.

(2) A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket.

(3) Questions of law shall be decided by the court and questions of fact by the jury except that, when a jury trial is waived, the court shall determine both questions of law and questions of fact.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(1).

46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county jury commission shall prepare a jury list for each justice's and city court within the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants.

History: En. 95-2005 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 420, L. 1975; amd. Sec. 31, Ch. 184, L. 1977; R.C.M. 1947, 95-2005.

46-17-203. Plea of guilty. Before or during trial, a plea of guilty may be accepted when:

(1) the defendant enters a plea of guilty in open court; and

(2) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(2).

46-17-204. Time to prepare for trial. After the plea, the defendant is entitled to a reasonable time to prepare for trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(4).

46-17-205. Presence of defendant. The trial may be had in the absence of the defendant but, if his presence is necessary for any purpose, the court may require the personal attendance of the defendant at the trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(3).

46-17-206 through 46-17-210 reserved.

46-17-211. Verdict. (1) The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter it or cause it to be entered in the minutes. The verdict of the jury must be unanimous.

(2) When several defendants are tried together and the jury cannot agree upon a verdict as to all, the jury may render a verdict as to those in regard to whom it does agree. A judgment must be entered accordingly on the verdict, and the case as to the rest may be tried by another jury.

(3) When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(4) The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict unless for good cause the court sooner discharges them.

History: En. 95-2006 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 4, L. 1973; rep. and re-en. 95-2006 by Sec. 30, Ch. 513, L. 1973; amd. Sec. 32, Ch. 184, L. 1977; R.C.M. 1947, 95-2006.

Part 3

Procedure After Trial — Justices' and City Courts

46-17-301. Sentence and judgment. (1) If a judgment of acquittal is rendered, the defendant must be immediately discharged.

(2) After a plea or verdict of guilty or after a judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the rendering of the verdict or judgment. The sentence must be entered in the minutes of the court as soon as it is imposed.

(3) If the defendant pleads guilty or is convicted either by the court or by a jury, the court must impose a sentence as provided in chapter 18, part 2, of this title. If alcohol or other drugs are involved, the court may impose such rehabilitative measures as it considers advisable under the circumstances.

(4) The determination and imposition of sentence are the exclusive duty of the court.

History: En. 95-2007 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 348, L. 1973; amd. Sec. 33, Ch. 184, L. 1977; R.C.M. 1947, 95-2007.

46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or policeman of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied in the proportion of 1 day's imprisonment for every $10 of the fine. When such a judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is sooner paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter must return the execution to the judge within 30 days from its delivery to him and pay over to the judge the money collected therefrom, deducting his fees for the collection.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part).

46-17-303. Deposit of fines. All fines imposed and collected by a justice's or city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days after the receipt of the same. The justice or city judge must take duplicate receipts therefor, one of which he must deposit with the county, city, or town clerk, as the case may be.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part).

46-17-304. Disposition of fines for city ordinance violations when appealed. All fines obtained from a judgment in a higher court on an appeal from a city court for violation of a city ordinance, tried de novo in the higher court, shall be paid to the county treasurer, who shall, before 31 days after receipt of the sum, forward one-half of the amount to the treasurer of the city in which the action originated.

History: En. Sec. 1, Ch. 32, L. 1967; R.C.M. 1947, 95-2008.1.

46-17-305 through 46-17-310 reserved.

46-17-311. Appeal. (1) All cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) The defendant may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment.

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the defendant to perfect the appeal.

History: En. 95-2009 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 34, Ch. 184, L. 1977; amd. Sec. 55, Ch. 344, L. 1977; R.C.M. 1947, 95-2009; amd. Sec. 20, Ch. 116, L. 1979.

Part 4

Procedure in Municipal Court

46-17-401. Applicability of district court rules. Except as otherwise provided by Title 3, chapter 6, and this part, the proceedings and practice in municipal court shall be the same as in district court.

History: En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; R.C.M. 1947, 11-1719(part).

46-17-402. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718.

46-17-403. Jury trial. In criminal causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

46-17-404. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court includes incarceration, no minimum amount in controversy may be required for appeal; and

(b) upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(1), (2).

CHAPTER 18

SENTENCE AND JUDGMENT

Part 1 — Policy and Preliminary Procedure

Section
46-18-101. Policy — liberal construction.
46-18-102. Rendering judgment and pronouncing sentence.
46-18-103. Sentence to be imposed by judge.
Sections 46-18-104 through 46-18-110 reserved.
46-18-111. Presentence investigation.
46-18-112. Content of investigation.
46-18-113. Availability of report to defendant and others.

Part 2 — Form of Sentence

46-18-201. Sentences that may be imposed.
46-18-202. Additional restrictions on sentence.
46-18-203. Revocation of suspended or deferred sentence.
46-18-204. Dismissal after deferred imposition.
Sections 46-18-205 through 46-18-210 reserved.
46-18-211. When no place of imprisonment is specified.
46-18-212. When no penalty is specified.
46-18-213. When no penalty is specified — felony.
Sections 46-18-214 through 46-18-220 reserved.
46-18-221. Additional sentence for offenses committed with a dangerous weapon.
46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.
46-18-223. Hearing to determine application of exceptions.

Part 3 — Death Penalty

46-18-301. Hearing on imposition of death penalty.
46-18-302. Evidence that may be received.
46-18-303. Aggravating circumstances.
46-18-304. Mitigating circumstances.
46-18-305. Effect of aggravating and mitigating circumstances.
46-18-306. Specific written findings of fact.
46-18-307. Automatic review of sentence.
46-18-308. Time for review — consolidation with appeal.
46-18-309. Transmission of transcript and record of trial.
46-18-310. Supreme court's determination as to the sentence.

Part 4 — Factors That Reduce Sentence

46-18-401. Merger of sentences.
46-18-402. Credit for time served.
46-18-403. Credit for incarceration prior to conviction.
46-18-404. Designation as nondangerous offender for purposes of parole eligibility.

Part 5 — Persistent Felony Offenders

46-18-501. Definition of persistent felony offender.
46-18-502. Sentencing of persistent felony offender.
46-18-503. Procedural requirements if sentence to be imposed.

Part 6 — Procedure After Sentencing

46-18-601. Judgment in writing — lien.
46-18-602. Entry of judgment and judgment roll.
46-18-603. Disposition of fines and forfeitures.

Part 7 — Jail Work Release Program

46-18-701. Parole during employment hours.
46-18-702. Disposition of prisoner's earnings.
46-18-703. Transfer to another county.
46-18-704. Reduction of sentence.
46-18-705. Effect of violation of conditions.

Part 8 — Effect of Conviction

46-18-801. Effect of conviction — civil disabilities.

Part 9 — Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences.
46-18-902. Interested judge not to act.
46-18-903. Application for review.
46-18-904. Procedure upon review.
46-18-905. Decision — finality, report of.

Part 1

Policy and Preliminary Procedure

46-18-101. Policy — liberal construction. This chapter shall be liberally construed to the end that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual.

History: **En. 95-2201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2201.**

46-18-102. Rendering judgment and pronouncing sentence. (1) The judgment shall be rendered in open court.

(2) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his bail bond.

(3) If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

History: **En. 95-2202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2202.**

46-18-103. Sentence to be imposed by judge. All sentences under this chapter shall be imposed exclusively by the judge of the court.

History: **En. 95-2212 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2212.**

46-18-104 through 46-18-110 reserved.

46-18-111. Presentence investigation. No defendant convicted of a crime which may result in commitment for 1 year or more in the state prison shall be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court unless the court deems such report unnecessary. The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense.

History: **En. 95-2203 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2203.**

46-18-112. Content of investigation. Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish the probation officer, on request, the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court.

History: **En. 95-2204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2204.**

46-18-113. Availability of report to defendant and others. (1) The judge may, in his discretion, make the investigation report or parts of it available to the defendants or others, while concealing the identity of persons who provided confidential information. If the court discloses the identity of persons who provided information, the judge may, in his discretion, allow the defendant to cross-examine those who rendered information.

(2) Such reports shall be part of the record but shall be sealed and opened only on order of the court.

(3) If a defendant is committed to a state institution, the investigation report shall be sent to the institution at the time of commitment.

History: En. 95-2205 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2205.

Part 2

Form of Sentence

46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(vi) any combination of the above;

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include any of those listed in subsections (1)(a)(i) through (1)(a)(vi).

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(e) impose any combination of subsections (1)(b), (1)(c), and (1)(d).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(1), (2), (4); amd. Sec. 21, Ch. 116, L. 1979; amd. Sec. 2, Ch. 322, L. 1979; amd. Sec. 2, Ch. 587, L. 1979.

Compiler's Comments

Saving clause. Sec. 4, Ch. 322, L. 1979, provided: "This act applies only to offenses committed after the effective date of this act." The effective date was July 1, 1979.

46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of his owning or carrying a dangerous weapon;

(c) restrictions on his freedom of association;

(d) restrictions on his freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the prisoner furlough program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2).

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(3); amd. Sec. 22, Ch. 116, L. 1979.

46-18-203. Revocation of suspended or deferred sentence. A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized, during the period of the suspended sentence or deferred imposition of sentence, in his discretion, to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the board of pardons as provided by law or retain such jurisdiction with his court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(5).

46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed.

History: En. 95-2207 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2207.

46-18-205 through 46-18-210 reserved.

46-18-211. When no place of imprisonment is specified. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed 1 year shall be to the county jail.

History: En. 95-2206.2 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.2.

46-18-212. When no penalty is specified. The court, in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed 6 months in the county jail or a fine not to exceed $500, or both.

History: En. 95-2206.3 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.3(part).

46-18-213. When no penalty is specified — felony. The court, in imposing sentence upon an offender convicted of an offense which is designated as a felony and no penalty is otherwise provided, may sentence the offender for any term not to exceed 10 years in the state prison.

History: En. 95-2206.4 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.4.

46-18-214 through 46-18-220 reserved.

46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

History: En. 95-2206.17 by Sec. 13, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.17.

46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3) and (4) of 46-18-201, 46-18-221(3), and 46-18-502(2) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense.

History: En. 95-2206.18 by Sec. 14, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.18; amd. Sec. 3, Ch. 322, L. 1979; amd. Sec. 1, Ch. 396, L. 1979.

46-18-223. Hearing to determine application of exceptions. (1) When the application of an exception provided for in 46-18-222 is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

History: En. 95-2206.19 by Sec. 15, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.19.

Part 3

Death Penalty

46-18-301. Hearing on imposition of death penalty. When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed. The hearing shall be conducted before the court alone.

History: En. 95-2206.6 by Sec. 1, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.6.

46-18-302. Evidence that may be received. In the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, and mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to such aggravating or mitigating circumstances shall be considered without reintroducing it at the sentencing proceeding. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

History: **En. 95-2206.7 by Sec. 2, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.7.**

46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim.

History: **En. 95-2206.8 by Sec. 3, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.8.**

46-18-304. Mitigating circumstances. Mitigating circumstances are any of the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The defendant acted under extreme duress or under the substantial domination of another person.

(4) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(5) The victim was a participant in the defendant's conduct or consented to the act.

(6) The defendant was an accomplice in an offense committed by another person, and his participation was relatively minor.

(7) The defendant, at the time of the commission of the crime, was less than 18 years of age.

(8) Any other fact exists in mitigation of the penalty.

History: **En. 95-2206.9 by Sec. 4, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.9.**

46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

History: En. 95-2206.10 by Sec. 5, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.10.

46-18-306. Specific written findings of fact. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact as to the existence or nonexistence of each of the circumstances set forth in 46-18-303 and 46-18-304. The written findings of fact shall be substantiated by the records of the trial and the sentencing proceeding.

History: En. 95-2206.11 by Sec. 6, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.11.

46-18-307. Automatic review of sentence. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana as provided for in 46-18-308 through 46-18-310.

History: En. 95-2206.12 by Sec. 7, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.12.

46-18-308. Time for review — consolidation with appeal. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana within 60 days after certification by the sentencing court of the entire record unless the time is extended by the supreme court for good cause shown. The review by the supreme court has priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

History: En. 95-2206.13 by Sec. 8, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.13.

46-18-309. Transmission of transcript and record of trial. The clerk of the trial court, within 10 days after receiving the transcript, shall transmit the entire record and transcript to the supreme court.

History: En. 95-2206.14 by Sec. 9, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.14.

46-18-310. Supreme court's determination as to the sentence. The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

(1) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

(3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The court shall include in its decision a reference to those similar cases it took into consideration.

History: En. 95-2206.15 by Sec. 10, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.15.

Part 4

Factors That Reduce Sentence

46-18-401. Merger of sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term except as provided in subsection (5); and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation shall be merged in any new sentence of commitment or probation.

(2) The court merging the sentences shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite the sentences being merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses shall run concurrently unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the prisoner furlough program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole.

History: En. 95-2213 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 340, L. 1977; R.C.M. 1947, 95-2213; amd. Sec. 23, Ch. 116, L. 1979.

46-18-402. Credit for time served. Where defendant has served any portion of his sentence under a commitment based upon a judgment which is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts. In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit.

History: En. 95-2214 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2214.

46-18-403. Credit for incarceration prior to conviction. (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to or after conviction, except that in no case shall the time allowed as a credit exceed the term of the prison sentence rendered.

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $10 for each day so incarcerated prior to conviction, except that in no case shall the amount so allowed or credited exceed the amount of the fine.

History: En. 95-2215 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2215.

46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) The sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such offense has been set aside in a postconviction hearing.

(3) If the court determines that an offender is not eligible to be designated as a nondangerous offender, it shall make that determination a part of the sentence imposed and shall state the determination in the judgment. Whenever the sentence and judgment do not contain such a determination, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

History: En. 95-2206.16 by Sec. 1, Ch. 340, L. 1977; R.C.M. 1947, 95-2206.16; amd. Sec. 1, Ch. 426, L. 1979.

Part 5

Persistent Felony Offenders

46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(1) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(2) less than 5 years have elapsed between the commission of the present offense and either:

(a) the previous felony conviction; or

(b) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(3) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a postconviction hearing.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(1).

46-18-502. Sentencing of persistent felony offender. (1) A persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years if he was 21 years of age or older at the time of the commission of the present offense.

(2) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) may not be deferred or suspended.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(2), (3).

46-18-503. Procedural requirements if sentence to be imposed. (1) If the state seeks treatment of the accused as a persistent felony offender under 46-18-502, notice of that fact must be given in writing to the accused or his attorney before the entry of a plea of guilty by the accused or before the case is called for trial upon a plea of not guilty.

(2) The notice must conform to the following provisions:

(a) The notice must specify the prior convictions alleged to have been incurred by the accused.

(b) The notice and the charges of prior convictions contained therein shall not be made public or in any manner be made known to the jury before the jury's verdict is returned upon the felony charge. However, if the defendant testifies in his own behalf, he is subject to impeachment as provided in the Montana Rules of Evidence.

(3) If the accused is convicted upon the felony charge, the notice, together with proper proof of timely service, shall be filed with the court before the time fixed for sentencing. The court shall then fix a time for hearing with at least 3 days' notice to the accused.

(4) The hearing shall be held before the court alone. If the court finds any of the allegations of prior conviction true, the accused shall be sentenced under the provisions of 46-18-502.

History: En. 95-1506 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 184, L. 1977; R.C.M. 1947, 95-1506.

Part 6

Procedure After Sentencing

46-18-601. Judgment in writing — lien. (1) The judgment shall be reduced to writing and signed by the judge.

(2) A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

History: En. 95-2208 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2208.

46-18-602. Entry of judgment and judgment roll. When judgment upon a conviction is rendered, the clerk must:

(1) enter the same in the minutes, stating briefly the offense for which the conviction was had and the fact of prior convictions (if any); and

(2) within 5 days, annex together and file the following papers, which will constitute the judgment roll:

(a) the indictment or information and a copy of the minutes of the arraignment, pleas, and motions;

(b) a copy of the minutes of the trial;

(c) the instructions given or refused and the endorsements thereon;

(d) a copy of the judgment.

History: En. 95-2209 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2209.

46-18-603. Disposition of fines and forfeitures. All fines and forfeitures collected in any court except city courts must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After such costs are paid, the residue, if not otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the fine or forfeiture is paid to the county treasurer, at the time of such payment there shall be filed with the county treasurer a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action. The statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. 95-2228 by Sec. 10, Ch. 513, L. 1973; R.C.M. 1947, 95-2228.

Part 7

Jail Work Release Program

46-18-701. Parole during employment hours. (1) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement with parole during the hours or periods the convicted person is actually employed.

(2) Upon the issuance of such an order under this part, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible. However, said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(a), (b).

46-18-702. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings the sheriff shall pay the prisoner's board and personal expenses both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any. Any balance shall be retained until his discharge.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(c).

46-18-703. Transfer to another county. The court may by order authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county. When such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person and shall dispose of said moneys as provided by 46-18-702.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(f).**

46-18-704. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term if, in the opinion of the court, the prisoner's conduct, diligence, and general attitude merit such diminution.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(d).**

46-18-705. Effect of violation of conditions. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court. The court may then require that the balance of his sentence be spent in full confinement, and further, the court may cancel any diminution of sentence granted under this part.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(e).**

Part 8

Effect of Conviction

46-18-801. Effect of conviction — civil disabilities. (1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned, he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

History: **En. 95-2227 by Sec. 9, Ch. 513, L. 1973; R.C.M. 1947, 95-2227.**

Part 9

Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of such judges to act as chairman thereof. The clerk of the Montana supreme court shall record such appointment and shall give notice thereof to the clerk of every district court.

(2) This review division shall meet at least four times a year or more as its business requires, as determined by the chairman. The review division shall hold its meetings at Deer Lodge.

(3) The decision of any two of such judges shall be sufficient to determine any matter before the review division.

(4) The review division may adopt any rules which will expedite its review of sentences. The division is also authorized to appoint a secretary and such clerical help as it deems adequate and fix their compensation.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-902. Interested judge not to act. No judge shall sit or act on a review of sentence imposed by him. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by said division, the chief justice of the supreme court of Montana may designate another judge to act in place of such judge.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-903. Application for review. (1) Any person sentenced to a term of 1 year or more in the state prison by any court of competent jurisdiction may within 60 days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit such application to the review division and shall notify the judge who imposed the sentence and the county attorney of the county in which the sentence was imposed. Such judge may transmit to the review division a statement of his reasons for imposing the sentence and shall transmit such a statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant such request.

(4) The filing of an application for review shall not stay the execution of the sentence.

History: En. 95-2502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2502.

46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review or may decide that the sentence under review should stand.

(2) In reviewing any judgment, said division may require the production of presentence reports and any other records, documents, or exhibits relevant to such review proceedings. The appellant may appear and be represented by

counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed.

(3) If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted.

History: **En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part).**

46-18-905. Decision — finality, report of. (1) The decision of the review division in each case shall be final, and the reasons for such decision shall be stated therein. The original of each decision shall be sent to the clerk of the court for the county in which the judgment was rendered, and a copy shall be sent to the judge who imposed the sentence reviewed, the person sentenced, and the principal officer of the institution in which he is confined.

(2) The decision shall be reported in the Montana Reports.

History: **En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part).**

CHAPTER 19

EXECUTION OF JUDGMENT

Part 1 — Method of Execution

Section

46-19-101. Commitment of defendant.
46-19-102. Execution of a fine.
46-19-103. Execution of death.

Part 2 — Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined.
46-19-202. Proceedings following determination regarding fitness.
46-19-203. Procedure for determining if woman is pregnant.
46-19-204. Proceedings following determination regarding pregnancy.

Part 3 — Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents.
46-19-302. Effectuation of purposes of compact.
46-19-303. Power of governor to enter into contracts.
46-19-304. Commitment or transfer of inmate to institution outside of state.
46-19-305. Hearings requested by other states.

Part 1

Method of Execution

46-19-101. Commitment of defendant. Upon rendition of judgment after pronouncement of a sentence imposing punishment of imprisonment or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of his confinement or execution.

History: **En. 95-2301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2301.**

46-19-102. Execution of a fine. (1) If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until fine be paid, the defendant must be committed to the custody of the proper officer and by him detained until the judgment is complied with. The imprisonment must not exceed 1 day for every $10 of the fine.

History: **En. 95-2302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2302.**

46-19-103. Execution of death. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced.

(2) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

(3) A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place.

(4) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives, or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same.

(5) After the execution, the sheriff must make a return upon the death warrant showing time, mode, and manner in which it was executed.

History: **En. 95-2303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2303.**

Part 2

Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined. If after judgment of death there is good reason to suppose that the defendant lacks mental fitness, the mental fitness of the defendant will be determined in accordance with the provisions of chapter 14 of this title.

History: **En. 95-2304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2304.**

46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the sheriff must execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of Warm Springs state hospital, the county prosecuting officer, or the defendant or his legal representative, determines after a hearing, if a

hearing is requested, that the defendant has regained fitness to proceed, the sheriff shall be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.

History: En. 95-2305 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 94, Ch. 120, L. 1974; R.C.M. 1947, 95-2305.

46-19-203. Procedure for determining if woman is pregnant. If there is good reason to suppose a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, must summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce his own witnesses.

History: En. 95-2306 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2306.

46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry that the woman is not pregnant, the sheriff must execute the judgment. If it is found that the woman is pregnant, the sheriff must suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

History: En. 95-2307 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2307.

Part 3

Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;

(2) "sending state" means a state party to this compact in which conviction was had;

(3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;

(4) "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution;

(5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III. Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) its duration;

(b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) delivery and retaking of inmates;

(e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate

to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: **En. 95-2308 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2308.**

46-19-302. Effectuation of purposes of compact. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions, including but not limited to the making and submission of such reports as are required by the compact.

History: **En. 95-2310 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2310.**

46-19-303. Power of governor to enter into contracts. The governor is hereby empowered to designate the department of institutions to enter into such contracts recommended by the department on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301.

History: **En. 95-2312 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2312; amd. Sec. 1, Ch. 59, L. 1979.**

46-19-304. Commitment or transfer of inmate to institution outside of state. Any court or state agency having power to commit or transfer an inmate (as defined in Article II(4) of the Western Interstate Corrections Compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to Article III of the Western Interstate Corrections Compact.

History: **En. 95-2309 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2309.**

46-19-305. Hearings requested by other states. The board of pardons and the department of institutions shall hold such hearings as may be requested by any other party state pursuant to Article IV(6) of the Western Interstate Corrections Compact.

History: **En. 95-2311 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 95, Ch. 120, L. 1974; R.C.M. 1947, 95-2311.**

CHAPTER 20

APPEALS

Part 1 — General Provisions

Section
46-20-101. Single method of review in criminal cases.
46-20-102. Suspension of the rules by supreme court.
46-20-103. Scope of appeal by state.
46-20-104. Scope of appeal by defendant.
46-20-105. Appeal by one codefendant.

Part 2 — Initiation of Appeal

46-20-201. Procedure on appeal — notice of appeal.
46-20-202. Names of parties.
46-20-203. Time for appeal from judgment.
46-20-204. Stay of execution and relief pending appeal.
46-20-205. Effect of an appeal by the state.

Part 3 — The Record on Appeal

46-20-301. Composition of the record on appeal.
46-20-302. Transcript of proceedings.
46-20-303. Indigent appeals.
46-20-304. Statement of the evidence or proceedings when no transcript available.

46-20-305. Agreed statement as the record on appeal.
46-20-306. Correction or modification of the record.
Sections 46-20-307 through 46-20-310 reserved.
46-20-311. Transmission of the record.
46-20-312. Extension of time for transmission of record.
46-20-313. Reduction of time for transmission of record.
46-20-314. Retention of record in district court by order of court.
46-20-315. Stipulation of parties that parts of record be retained.
46-20-316. Docketing the appeal.
46-20-317. Filing of the record.
46-20-318. Dismissal for failure to cause timely transmission — transmission at instance of respondent.
46-20-319. Effect of dismissal.

Part 4 — Briefs

46-20-401. Brief of the appellant.
46-20-402. Brief of the respondent.
46-20-403. Reply brief.
46-20-404. Brief of an amicus curiae — oral argument.
46-20-405. Filing and service of briefs.
46-20-406. References in briefs to parties.
46-20-407. References in briefs to the record.
46-20-408. Reproduction of statutes, rules, etc.
46-20-409. Length of briefs.
46-20-410. Appendix to brief.

Part 5 — Motions and Papers in General

46-20-501. Motions.
46-20-502. Filing and service of papers.
46-20-503. Computation of time.
46-20-504. Permission to take record and other papers from clerk's office.
Sections 46-20-505 through 46-20-510 reserved.
46-20-511. Printing format of documents.
46-20-512. Typewritten papers and motions.
46-20-513. First page and cover of papers.

Part 6 — Oral Argument

46-20-601. Calendar.
46-20-602. Time for oral argument.
46-20-603. Conduct of oral argument.
46-20-604. Failure to appear — submission on briefs.

Part 7 — Action by Court

46-20-701. Elements of record court considers on review.
46-20-702. Types of errors noticed on appeal.
46-20-703. Action reviewing court may take.
46-20-704. Entry and notice of orders and judgments.
46-20-705. Petitions for rehearing.
46-20-706. Termination of appeal — remand.
46-20-707. Discharge of defendant on reversal of judgment.

Part 1

General Provisions

46-20-101. Single method of review in criminal cases. (1) This chapter shall govern review in all criminal cases.

(2) All existing methods of review in criminal cases in the state are abolished. After January 1, 1968, the only method of review in criminal cases shall be by notice of appeal.

History: En. 95-2401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2401.

46-20-102. Suspension of the rules by supreme court. In the interest of expediting decision upon any matter before it or for other good cause shown, the supreme court may suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

History: En. 95-2402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2402.

46-20-103. Scope of appeal by state. (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;
(b) modifying or changing the verdict as provided in 46-16-702(3)(c);
(c) granting a new trial;
(d) quashing an arrest or search warrant;
(e) suppressing evidence;
(f) suppressing a confession or admission; or
(g) granting or denying change of venue.

History: En. 95-2403 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 41, Ch. 184, L. 1977; R.C.M. 1947, 95-2403.

46-20-104. Scope of appeal by defendant. (1) An appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.

(2) Upon appeal from a judgment, the court may review the verdict or decision and any order or decision objected to which involves the merits or necessarily affects the judgment.

History: En. 95-2404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2404.

46-20-105. Appeal by one codefendant. When several defendants are tried jointly, any one or more of them may take an appeal but those who do not join in the appeal shall not be affected thereby.

History: En. 95-2429 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2429.

Part 2

Initiation of Appeal

46-20-201. Procedure on appeal — notice of appeal. (1) An appeal shall be taken by filing a notice of appeal in the court in which the judgment or order appealed from is entered or filed.

(2) The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment or order appealed from.

(3) The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the

party at his last known address and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(a) thru (c).**

46-20-202. Names of parties. The party appealing shall be known as the appellant and the adverse party as the respondent, but the title of the case shall not be changed in consequence of the appeal.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(d).**

46-20-203. Time for appeal from judgment. An appeal from a judgment may be taken within 60 days after its rendition.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(e).**

46-20-204. Stay of execution and relief pending appeal. (1) If an appeal is taken, a sentence of death shall be stayed by order of the trial court until final order by the supreme court.

(2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the trial court.

(3) If an appeal is taken, a sentence to pay a fine or a fine and costs shall be stayed by the trial court or by the reviewing court.

(4) If an appeal is taken and the accused was admitted to probation, he shall remain on probation or post bail.

History: **En. 95-2406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2406.**

46-20-205. Effect of an appeal by the state. An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed.

History: **En. 95-2407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2407.**

Part 3

The Record on Appeal

46-20-301. Composition of the record on appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

History: **En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(a).**

46-20-302. Transcript of proceedings. (1) Within 10 days after filing the notice of appeal, the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order, or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory or to support a specific finding of fact by the trial court is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer, or finding.

(2) Unless the entire transcript is to be included, the appellant shall within the time above provided file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

(3) The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost. If the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent. The district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

(4) The reporter shall certify the correctness of the transcript.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(b).

46-20-303. Indigent appeals. (1) Upon imposition of any sentence in a criminal case, a defendant may file in the trial court a petition requesting that he be furnished with a transcript of the proceeding at his trial. The petition shall be verified by the petitioner and shall state facts showing that he is at the time of filing the petition without financial means to pay for the transcript. If the trial judge who imposed sentence or in his absence any judge of the court finds that the defendant is without financial means with which to obtain the transcript of the proceedings at his trial, he shall order the official court reporter to transcribe an original and copy of his notes of the proceedings at the trial. The original of the report of proceedings shall be filed with the clerk of the trial court, and the copy shall be delivered to the defendant without charge.

(2) If the petition provided for in subsection (1) is denied by the trial court, a petition so to proceed may be filed in the supreme court within 30 days after entry of the denial. The petition shall be accompanied by a copy of the verification filed in the trial court and a copy of the statement of reasons for denial given by the trial court.

History: En. 95-2428 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2428.

46-20-304. Statement of the evidence or proceedings when no transcript available. (1) If no report of the evidence or proceedings at a hearing or trial was made or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service.

(2) Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings and, as settled and approved, shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such records after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(c).

46-20-305. Agreed statement as the record on appeal. In lieu of the record on appeal, as defined in 46-20-301, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issue presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by 46-20-311 through 46-20-313. Copies of the agreed statement may be filed as the appendix required by 46-20-410.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(d).

46-20-306. Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(e).

46-20-307 through 46-20-310 reserved.

46-20-311. Transmission of the record. (1) The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under 46-20-312 or 46-20-313. Promptly after filing the notice of appeal, the appellant shall comply with the provisions of 46-20-302 and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of 46-20-302 and this subsection and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(2) When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The clerk of the district court shall indicate by endorsement on the face of the record or otherwise the date upon which it is transmitted to the supreme court.

History: En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(a), (b).

46-20-312. Extension of time for transmission of record. (1) The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal.

(2) If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed.

(3) A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

History: En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).

46-20-313. Reduction of time for transmission of record. The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

History: En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).

46-20-314. Retention of record in district court by order of court. (1) The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

(2) If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect and the clerk of the district court shall retain the record and shall transmit a copy of the

order and of the docket entries together with such parts as the parties may designate.

(3) If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court and transmission of the copy of the docket entries shall constitute transmission of the record.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(d).**

46-20-315. Stipulation of parties that parts of record be retained. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(e).**

46-20-316. Docketing the appeal. The clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

History: **En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(a).**

46-20-317. Filing of the record. Upon receipt of the record by the clerk of the supreme court following its timely transmittal and after the appeal has been timely docketed, the clerk shall file the record without the necessity of a docketing fee. The clerk shall immediately give notice to all parties of the date on which the record was filed.

History: **En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(b).**

46-20-318. Dismissal for failure to cause timely transmission — transmission at instance of respondent. (1) If the appellant fails to cause timely transmission of the record, any respondent may file a motion in the supreme court to dismiss the appeal. The motion must be supported by:

(a) a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and

(b) proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal.

(2) Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: **En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(c); amd. Sec. 24, Ch. 116, L. 1979.**

46-20-319. Effect of dismissal. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from unless the dismissal is expressly made without prejudice to another appeal.

History: **En. 95-2411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2411.**

Part 4

Briefs

46-20-401. Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) a table of contents with page references and a table of cases (alphabetically arranged), statutes, and other authorities cited with references to the pages of the brief where they are cited;

(2) a statement of the issues presented for review;

(3) a statement of the case, which shall first indicate briefly the nature of the case and its disposition in the court below;

(4) a statement of the facts relevant to the issues presented for review with references to the pages of the parts of the record at which material facts appear (see 46-20-407);

(5) an argument, which may be preceded by a summary and which shall contain the contentions of the appellant with respect to the issues presented and the reasons therefor, with citations to the authorities, statutes, and pages of the record relied on;

(6) a short conclusion stating the precise relief sought.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(a).**

46-20-402. Brief of the respondent. The brief of the respondent shall conform to the requirements of subsections (1) through (5) of 46-20-401, except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(b).**

46-20-403. Reply brief. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(c).**

46-20-404. Brief of an amicus curiae — oral argument. A brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

History: **En. 95-2417 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2417.**

46-20-405. Filing and service of briefs. (1) The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(2) Six copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall

be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by 46-20-502.

(3) If an appellant fails to file his brief within the time provided by this section or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

History: **En. 95-2419 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2419.**

46-20-406. References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent". It promotes clarity to use names or descriptive terms such as "accomplice", "decedent", etc.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(d).**

46-20-407. References in briefs to the record. When a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e.g., Answer, p. 7; Motion for Suppression of Evidence, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(e).**

46-20-408. Reproduction of statutes, rules, etc. If determination of the issues presented requires the study of statutes, rules, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end or they may be supplied to the court in pamphlet form. No such reproduction is required unless ordered by the supreme court.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(f).**

46-20-409. Length of briefs. Except by permission of the court, briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations, and any addendum containing statutes, rules, etc.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(g).**

46-20-410. Appendix to brief. (1) At any time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file, and serve with his brief an appendix.

(2) Unless otherwise ordered by the supreme court, an appendix shall contain:

(a) the relevant docket entries in the proceeding below;

(b) any relevant pleading and relevant portions of the charge, finding, and opinion;

(c) the judgment, order, or decision in question; and

(d) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(3) (a) At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

(b) The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter the parts of the record shall be set out in chronological order.

(4) The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where the page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(5) Exhibits may be contained in a separate volume suitably indexed.

History: En. 95-2418 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2418.

Part 5

Motions and Papers in General

46-20-501. Motions. (1) Unless another form is prescribed by this chapter, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought.

(2) If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. At the time of filing a motion, counsel shall present a proposed order together with sufficient copies for service upon all counsel of record.

(3) Motions for procedural orders may be determined ex parte. The supreme court may authorize disposition of motions for procedural orders by a single judge.

(4) If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion or within such time as the court may direct.

(5) Motions, supporting papers, and any response thereto may be typewritten.

History: En. 95-2415 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2415.

46-20-502. Filing and service of papers. (1) Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(2) Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(3) Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(4) Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

History: En. 95-2413 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2413.

46-20-503. Computation of time. (1) In computing any period of time prescribed by this chapter, by an order of court or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

History: En. 95-2414 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2414.

46-20-504. Permission to take record and other papers from clerk's office. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office. The court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

History: En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(c).

46-20-505 through 46-20-510 reserved.

46-20-511. Printing format of documents. (1) Briefs, appendices, and separate volumes of exhibits may be produced by standard typographic printing or by any duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices, and separate volumes of exhibits may not be submitted without permission of the chief justice of the supreme court, except in behalf of parties allowed to proceed in forma pauperis. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter.

(2) Briefs, appendices, and separate volumes of exhibits shall be on white uncalendered book paper in book or booklet form. If produced by the standard typographic printing process, the pages shall be 10 inches long and 7 inches wide with a margin on the outer edge not less than 1 inch wide and on the inner edge not less than 2 inches wide. If produced by a duplicating or copying process, the pages shall be 11 inches long and 8 ½ inches wide with a margin on the outer edge not less than 1 inch wide and on the inner edge not less than 2 inches wide. The pages shall be fastened at the side and numbered at the top.

History: **En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(a).**

46-20-512. Typewritten papers and motions. (1) Papers not required to be produced in a manner prescribed by 46-20-511 shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper 8 ½ inches wide and 13 inches long, numbered at the bottom, with a ruled margin of 1 ½ inches on the left-hand side of the page and 1 inch on the right-hand side and numbered lines, not more than 32 lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than 250 pages. If the pages number 50 or less, they may be bound at the top.

(2) In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible, and nonuniform typewritten copies has become so great that this section will be strictly applied and papers not complying with it will not be received.

History: **En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(b).**

46-20-513. First page and cover of papers. All papers shall be bound in cardboard or pasteboard covers unless bound at the top under 46-20-512, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of the supreme court; the title of the case as in the court below, adding to the words "plaintiff" and "defendant", the words "appellant" and "respondent" as the case may require; the names of counsel for appellant and respondent; the title of the papers, as "Appellant's Brief", "Appendix to Appellant's Brief", etc.; and the venue from which the appeal is taken.

History: **En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(c).**

Part 6

Oral Argument

46-20-601. Calendar. (1) Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(2) Causes against defendants held in custody will be set for argument by the court in advance of causes against defendants on bail unless for good cause the court shall otherwise order.

History: **En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(a), (b).**

46-20-602. Time for oral argument. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

History: **En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(a).**

46-20-603. Conduct of oral argument. (1) Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(2) The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records, or authorities.

(3) If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

History: **En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(b), (c), (f).**

46-20-604. Failure to appear — submission on briefs. (1) If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(2) By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

History: **En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(d), (e).**

Part 7

Action by Court

46-20-701. Elements of record court considers on review. Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent affecting his substantial rights on the appeal of said cause, together with any required objection of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings and the objections thereto and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. No cause shall be reversed by reason of any error committed by the trial court against the appellant unless the record shows that the error was prejudicial.

History: En. 95-2412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2412.

46-20-702. Types of errors noticed on appeal. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Defects affecting jurisdictional or constitutional rights may be noticed although they were not brought to the attention of the trial court.

History: En. 95-2425 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2425.

46-20-703. Action reviewing court may take. On appeal the reviewing court may:

(1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

(2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) reduce the offense of which the appellant was convicted to a lesser included offense;

(4) reduce the punishment imposed by the trial court; or

(5) order a new trial if justice so requires.

History: En. 95-2426 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 42, Ch. 184, L. 1977; R.C.M. 1947, 95-2426.

46-20-704. Entry and notice of orders and judgments. The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order and notice of the date of entry thereof.

History: En. 95-2422 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2422.

46-20-705. Petitions for rehearing. (1) A petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered unless the time is shortened or enlarged by order. The adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit and in no event in excess of 10 days.

(2) A petition for rehearing may be presented upon the following grounds and none others:

(a) that some facts material to the decision or some question decisive of the case submitted by counsel was overlooked by the court; or

(b) that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed.

(3) Oral argument in support of the petition will not be permitted. No reply to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. Six copies of the petition, produced in accordance with part 5 of this chapter, shall be filed with the clerk.

History: En. 95-2423 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2423.

46-20-706. Termination of appeal — remand. (1) Upon termination of the appeal, the supreme court shall remand the cause with proper instruction together with the opinion of the court. The clerk shall return all original documents to the trial court.

(2) After the cause has been remanded to the trial court, the appellate court has no further jurisdiction of the appeal or the proceedings thereon and all orders necessary to carry the judgment into effect must be made by the court to which the cause is remanded.

History: **En. 95-2427 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2427.**

46-20-707. Discharge of defendant on reversal of judgment. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must:

(1) if he is in custody, direct him to be discharged therefrom;

(2) if he is on bail, direct that his bail be exonerated; or

(3) if money was deposited instead of bail, direct that it be refunded to the defendant.

History: **En. 95-2430 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2430.**

CHAPTER 21

POSTCONVICTION HEARING

Part 1 — Initiating Proceedings

Section
46-21-101. Circumstances in which validity of sentence may be challenged.
46-21-102. When petition may be filed.
46-21-103. Commencement of proceedings.
46-21-104. Contents of petition.
46-21-105. What grounds for relief waived if not raised.

Part 2 — Action of Court

46-21-201. Proceedings on the petition.
46-21-202. Record must be kept.
46-21-203. Review.

Part 1

Initiating Proceedings

46-21-101. Circumstances in which validity of sentence may be challenged. A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which imposed the sentence, the supreme court, or any justice of the supreme court to vacate, set aside, or correct the sentence.

History: **En. 95-2601 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 43, Ch. 184, L. 1977; R.C.M. 1947, 95-2601.**

46-21-102. When petition may be filed. A petition for such relief may be filed at any time after conviction.

History: En. 95-2604 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 44, Ch. 184, L. 1977; R.C.M. 1947, 95-2604.

46-21-103. Commencement of proceedings. The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place or the clerk of the supreme court a verified petition. The clerk shall docket the petition upon its receipt and bring the same promptly to the attention of the court.

History: En. 95-2602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2602.

46-21-104. Contents of petition. The petition shall identify the proceeding in which the petitioner was convicted, give date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Arguments and citations and discussion of authorities shall be omitted from this petition.

History: En. 95-2603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2603.

46-21-105. What grounds for relief waived if not raised. All grounds for relief claimed by a petitioner under this chapter must be raised in his original or amended petition. Any grounds other than constitutional grounds not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition.

History: En. 95-2607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2607.

Part 2

Action of Court

46-21-201. Proceedings on the petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place, grant a prompt hearing thereon, determine the issue, and make findings of fact and conclusions with respect thereto.

(2) The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing.

(3) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed.

History: En. 95-2605 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 45, Ch. 184, L. 1977; R.C.M. 1947, 95-2605.

46-21-202. Record must be kept. A court which entertains a petition pursuant to this chapter must keep a record of the proceedings and enter its findings and conclusions.

History: En. 95-2606 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 46, Ch. 184, L. 1977; R.C.M. 1947, 95-2606.

46-21-203. Review. Either the petitioner or the state may appeal to the supreme court of Montana from an order entered on the petition. The appeal must be taken within 6 months from the entry of the order.

History: En. 95-2608 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 47, Ch. 184, L. 1977; R.C.M. 1947, 95-2608.

CHAPTER 22

HABEAS CORPUS

Part 1 — Availability of Writ

Section

46-22-101. Who may prosecute writ.
46-22-102. No release for technical defects.
46-22-103. Writ for purpose of bail.

Part 2 — Issuance of Writ

46-22-201. Application for writ.
46-22-202. By whom issued and before whom returnable.
46-22-203. Writ granted without delay.
46-22-204. Writ and process may issue at any time.
46-22-205. Contents of writ.
46-22-206. Service of writ.

Part 3 — Return of Writ, Hearing, Appeal

46-22-301. Contents of return.
46-22-302. Production of person — exception for infirmity or illness.
46-22-303. Refusal to obey writ — contempt.
46-22-304. Hearing on return.
46-22-305. Production of evidence — depositions.
46-22-306. Disposition of petitioner.
46-22-307. Appeal by state.

Part 1

Availability of Writ

46-22-101. Who may prosecute writ. Every person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom.

History: En. 95-2701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2701.

46-22-102. No release for technical defects. A person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting his substantial rights.

History: En. 95-2716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2716.

46-22-103. Writ for purpose of bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

History: En. 95-2702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2702.

Part 2

Issuance of Writ

46-22-201. Application for writ. (1) Application for the writ is made by petition signed either by the party for whose relief it is intended or by some person in his behalf. It must specify:

(a) that the person in whose behalf the writ is applied for is unlawfully imprisoned or restrained of his liberty;

(b) why the imprisonment or restraint is unlawful;

(c) the place where and the officer or person by whom he is so confined or restrained.

(2) All the parties must be named if they are known or described if they are not known.

(3) The petition must be verified by the oath or affirmation of the party making the application.

History: En. 95-2703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2703; amd. Sec. 25, Ch. 116, L. 1979.

46-22-202. By whom issued and before whom returnable. The writ of habeas corpus may be granted:

(1) by the supreme court or any justice thereof upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court or any justice thereof or before any district court or judge thereof.

(2) by a district court or a judge thereof upon petition by or on behalf of any person restrained of his liberty in the court's or judge's respective district or county.

History: En. 95-2704 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2704; amd. Sec. 26, Ch. 116, L. 1979.

46-22-203. Writ granted without delay. Any court or judge authorized to grant the writ to whom a petition therefor is presented must, if it appears that the writ ought to issue, grant the same without delay.

History: En. 95-2705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2705.

46-22-204. Writ and process may issue at any time. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

History: En. 95-2715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2715.

46-22-205. Contents of writ. (1) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command him to have the body of such person before the court or judge before whom the writ is returnable at a time and place therein specified.

(2) The issue or issues to be determined upon return of the writ may be stated either in the writ or in an order attached to the writ. If the issue or issues to be determined upon return of the writ are not stated therein or in an order attached thereto, then a copy of the petition must be attached to the writ.

History: **En. 95-2707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2707.**

46-22-206. Service of writ. (1) The writ must be served upon the person to whom it is directed. If the person to whom the writ is directed represents a state institution, a copy of the writ shall be served upon the attorney general. If such person represents a county institution, a copy of the writ shall be served upon the county attorney.

(2) The writ shall be served by the clerk of court, the sheriff, or any other officer directed to do so by the court.

(3) The writ shall be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the court or judge.

History: **En. 95-2708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2708.**

Part 3

Return of Writ, Hearing, Appeal

46-22-301. Contents of return. (1) The person upon whom the writ is served must make a return and state in his return:

(a) whether he has the party in his custody or under his power or restraint;

(b) if he has the party in his custody or under his power or restraint, the authority for and cause of such custody or restraint; if the detention is by legal process, a copy thereof must be annexed to the response;

(c) if he had the party in his custody or under his power or restraint at any time prior or subsequent to the date of the writ but has transferred such custody or restraint to another, particularly to whom, at what time and place, for what cause, and by what authority such transfer took place.

(2) The return must be signed by the person making the same and, except when such person is a sworn public officer and makes such return in his official capacity, it must be verified by his oath.

History: **En. 95-2709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2709.**

46-22-302. Production of person — exception for infirmity or illness. The person commanded by the writ shall bring the detained person according to the command of the writ unless it is made to appear by affidavit that because of sickness or infirmity such person cannot be brought before the judge without danger to his health. If the judge is satisfied with the truth of the affidavit, he may proceed and dispose of the case as if the party had been produced or the hearing may be postponed until the party can be present.

History: **En. 95-2710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2710.**

46-22-303. Refusal to obey writ — contempt. If the person commanded by the writ refuses to obey, he shall be adjudged in contempt of court.

History: **En. 95-2706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2706.**

46-22-304. Hearing on return. (1) The court or judge before whom the writ is returned must immediately after the return proceed to hear and examine the return.

(2) The hearing on the writ may be summary in nature.

History: **En. 95-2711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2711.**

46-22-305. Production of evidence — depositions. Evidence may be produced and compelled as in civil actions. Depositions taken in accordance with the Montana Rules of Civil Procedure may be read as evidence at the hearing on the writ.

History: **En. 95-2712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2712.**

46-22-306. Disposition of petitioner. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceeding and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed.

History: **En. 95-2713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2713.**

46-22-307. Appeal by state. An appeal may be taken to the supreme court by the state from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal. The appeal shall be taken in the same manner as in civil actions.

History: **En. 95-2714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2714.**

CHAPTER 23

PROBATION, PAROLE, AND CLEMENCY

Part 1 — General Provisions—Board of Pardons

Section

46-23-101. Short title.
46-23-102. Cases of juveniles excluded.
46-23-103. Definitions.
46-23-104. Board of pardons.
46-23-105. Legal adviser.
46-23-106. Information from courts to board.
46-23-107. Orders of board — reviewability.
46-23-108. Records and reports — confidentiality.

Part 2 — Granting of Parole

46-23-201. Prisoners eligible for parole.
46-23-202. Investigation of prisoner by board.
46-23-203. Information from prison officials.
46-23-204. All persons may be heard — counsel.
46-23-205. Subpoenas — issuance, service.

46-23-206. Enforcement of subpoenas by court.
46-23-207. Penalty for disobedience.
Sections 46-23-208 through 46-23-214 reserved.
46-23-215. Conditions of parole.
46-23-216. Duration of parole.
46-23-217. Service of term for additional crime.
46-23-218. Authority of board to adopt rules.

Part 3 — Executive Clemency

46-23-301. Cases of executive clemency — approval of board.
46-23-302. Order for hearing on application for executive clemency.
46-23-303. Publication of order.
46-23-304. Proof of publication.
46-23-305. When publication not necessary.
46-23-306. Record of hearing.
46-23-307. Decision of board.
Sections 46-23-308 through 46-23-314 reserved.
46-23-315. Authority of governor to grant respite.
46-23-316. Governor's report to legislature.

Part 4 — Prisoner Furlough Program

46-23-401. Definitions.
46-23-402. Purpose of prisoner furlough program.
46-23-403. Prisoner not agent or involuntary servant.
46-23-404. No effect on eligibility for parole.
46-23-405. Establishing program — rules.
46-23-406. Cooperation of other agencies.
Sections 46-23-407 through 46-23-410 reserved.
46-23-411. Application to participate — eligibility.
46-23-412. Board's action on application.
46-23-413. Reapplication where denied.
46-23-414. Procedure upon approval.
46-23-415. Disposition of prisoner's earnings — payment of expenses.
Sections 46-23-416 through 46-23-420 reserved.
46-23-421. Responsibility of department and supervising agency.
46-23-422. Violation of furlough agreement by prisoner.
46-23-423. Immediate reincarceration if threat to community.
46-23-424. When prisoner dissatisfied with program.
46-23-425. When prisoner not benefiting from program.
46-23-426. Escape.

Parts 5 through 9 reserved

Part 10 — Supervision of Probationers and Parolees

46-23-1001. Definitions.
46-23-1002. Powers of the department.
46-23-1003. Qualifications of probation and parole officers.
46-23-1004. Duties of the department.
Sections 46-23-1005 through 46-23-1010 reserved.
46-23-1011. Supervision on probation.
46-23-1012. Arrest when violations of probation alleged.
46-23-1013. Action of court after arrest.
46-23-1014. When probationer considered a fugitive.
Sections 46-23-1015 through 46-23-1020 reserved.
46-23-1021. Supervision on parole.
46-23-1022. Parole services.
46-23-1023. Arrest of alleged parole violator.
46-23-1024. Initial hearing after arrest.
46-23-1025. Report to and action by the board.
46-23-1026. When prisoner considered a fugitive.

Part 11 — Interstate Supervision of Probation and Parole

46-23-1101. Short title.
46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms.
46-23-1103. Arranging for sending state to retake or reincarcerate violator.
46-23-1104. Hearing officers — who eligible.
46-23-1105. Rights of parolee or probationer regarding hearing.
46-23-1106. Hearing in another state — record, effect.

Part 1

General Provisions — Board of Pardons

46-23-101. Short title. Parts 1, 2, 3, and 10 of this chapter shall be known and may be cited as the "Parole and Executive Clemency Act".

History: En. Sec. 1, Ch. 153, L. 1955; Sec. 94-9821, R.C.M. 1947; redes. 95-3203 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 2, Ch. 333, L. 1975; R.C.M. 1947, 95-3203.

46-23-102. Cases of juveniles excluded. The provisions of parts 1, 2, 3, and 10 of this chapter shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955; Sec. 94-9850, R.C.M. 1947; redes. 95-3232 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3232.

46-23-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department of institutions.

History: En. Sec. 3, Ch. 153, L. 1955; Sec. 94-9823, R.C.M. 1947; amd. Sec. 1, Ch. 73, L. 1973; redes. 95-3205 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 82, Ch. 120, L. 1974; amd. Sec. 5, Ch. 333, L. 1975; R.C.M. 1947, 95-3205.

46-23-104. Board of pardons. (1) The board of pardons is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet at least twice each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge.

History: En. Sec. 2, Ch. 153, L. 1955; Sec. 94-9822, R.C.M. 1947; redes. 95-3204 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 81, Ch. 120, L. 1974; amd. Sec. 3, Ch. 333, L. 1975; R.C.M. 1947, 95-3204.

46-23-105. Legal adviser. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955; Sec. 94-9827, R.C.M. 1947; redes. 95-3209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3209.

HAROLD H. HARRISON
ATTORNEY AT LAW

46-23-106. Information from courts to board. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. 95-2210 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2210.

46-23-107. Orders of board — reviewability. Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance with the terms of parts 1, 2, 3, and 10 of this chapter.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(1).

46-23-108. Records and reports — confidentiality. The department shall keep a record of the board's acts and decisions available to the public. However, all social records, including the presentence report, the preparole report, and the supervision history obtained in the discharge of official duty by the department, are confidential and may not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may, in its discretion, when the best interests or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the social record or any parts thereof by the prisoner or his attorney.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(2); amd. Sec. 27, Ch. 116, L. 1979.

Part 2

Granting of Parole

46-23-201. Prisoners eligible for parole. (1) Subject to the following restrictions, the board shall release on parole by appropriate order any person confined in the Montana state prison, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community:

(a) No convict serving a time sentence may be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

(b) No convict serving a life sentence may be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(2) A parole shall be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner

shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(1), (2).

46-23-202. Investigation of prisoner by board. (1) Within 2 months after his admission and at such intervals thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of any physical and mental examinations which have been made.

(2) Before ordering the parole of any prisoner the board shall interview him.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(3).

46-23-203. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner over whom the board has jurisdiction under parts 1, 2, 3, and 10 of this chapter, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955; Sec. 94-9834, R.C.M. 1947; redes. 95-3216 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3216.

46-23-204. All persons may be heard — counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board, and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: En. Sec. 15, Ch. 153, L. 1955; Sec. 94-9835, R.C.M. 1947; redes. 95-3217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3217.

46-23-205. Subpoenas — issuance, service. (1) The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof.

(2) Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law enforcement officer.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-206. Enforcement of subpoenas by court. In case of contumacy by or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered or there to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-207. Penalty for disobedience. Any person who shall without just cause fail or refuse to attend and testify, to answer any lawful inquiry, or to produce records, books, papers, and other documents if it is in his power to do so in obedience to a subpoena of the board or any member thereof shall be punished by a fine of not more than $200 or by imprisonment for not longer than 60 days or by both such fine and imprisonment. Each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-208 through 46-23-214 reserved.

46-23-215. Conditions of parole. (1) Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

(2) When an order for parole is issued, it shall recite the conditions thereof.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(4).

46-23-216. Duration of parole. (1) A prisoner on parole who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less the good time allowance as provided for in 53-30-105.

(2) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: (1)En. Sec. 13, Ch. 153, L. 1955; Sec. 94-9833, R.C.M. 1947; redes. 95-3215 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 87, Ch. 120, L. 1974; amd. Sec. 4, Ch. 312, L. 1975; amd. Sec. 61, Ch. 184, L. 1977; amd. Sec. 4, Ch. 340, L. 1977; Sec. 95-3215, R.C.M. 1947, 95-3215; (2)En. Sec. 20, Ch. 153, L. 1955; Sec. 94-9840, R.C.M. 1947; redes. 95-3222 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3222, R.C.M. 1947; R.C.M. 1947, 95-3215, 95-3222.

46-23-217. Service of term for additional crime. A prisoner who commits a crime while at large on parole or conditional release and who is convicted and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.

History: En. Sec. 19, Ch. 153, L. 1955; Sec. 94-9839, R.C.M. 1947; redes. 95-3221 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3221; amd. Sec. 28, Ch. 116, L. 1979.

46-23-218. Authority of board to adopt rules. The board may adopt any other rules it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions to be imposed upon parolees.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(5).

Part 3

Executive Clemency

46-23-301. Cases of executive clemency — approval of board. The board shall investigate and report to the governor with respect to all cases of executive clemency. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted and as to the individual circumstances relating to social conditions of the applicant. If the board or a majority thereof approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955; Sec. 94-9841, R.C.M. 1947; amd. Sec. 2, Ch. 73, L. 1973; redes. 95-3223 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3223.

46-23-302. Order for hearing on application for executive clemency. After the board has duly considered an application for executive clemency and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for executive clemency concerning ...., a convict confined in the state prison (or to one ...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of .... committed at ...., in the county of ...., State of Montana, on the .... day of ...., 19.., and sentenced for a term of .... years.

Therefore, be it ordered that ...., the .... day of ...., 19.., be set apart for the consideration of said executive clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon or reprieve, commutation, restoration of citizenship, remission or suspension of fine or forfeiture are hereby notified to be present at .... o'clock of said day, at .....

Further, ordered that a copy of this order be printed and published in the .... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at ...., in the county of ...., once each week for 2 weeks beginning ...., 19.., and ending ....."

History: En. Sec. 22, Ch. 153, L. 1955; Sec. 94-9842, R.C.M. 1947; amd. Sec. 3, Ch. 73, L. 1973; redes. 95-3224 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3224.

46-23-303. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated at least once a week for 2 weeks prior to the hearing and, at the same time, cause to be deposited in the post office at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the petitioner and the convict.

History: En. Sec. 23, Ch. 153, L. 1955; Sec. 94-9843, R.C.M. 1947; redes. 95-3225 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3225.

46-23-304. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955; Sec. 94-9844, R.C.M. 1947; redes. 95-3226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3226.

46-23-305. When publication not necessary. No publication need be made as provided in 46-23-302, 46-23-303, and 46-23-304 in the following cases:

(1) when there is imminent danger of the death of the person convicted or imprisoned;

(2) when the term of imprisonment of the applicant is within 10 days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955; Sec. 94-9846, R.C.M. 1947; amd. and redes. 95-3228 by Sec. 28, Ch. 513, L. 1973; R.C.M. 1947, 95-3228.

46-23-306. Record of hearing. At the hearing the board must cause to be kept a record showing:

(1) the names of all persons appearing before the board on behalf of the person seeking clemency from the governor;

(2) the names of all persons appearing before the board in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the board;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955; Sec. 94-9845, R.C.M. 1947; redes. 95-3227 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3227; amd. Sec. 29, Ch. 116, L. 1979.

46-23-307. Decision of board. Within 30 days after the hearing of any case, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955; Sec. 94-9847, R.C.M. 1947; redes. 95-3229 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3229.

46-23-308 through 46-23-314 reserved.

46-23-315. Authority of governor to grant respite. The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for such time as he thinks proper.

History: En. Sec. 28, Ch. 153, L. 1955; Sec. 94-9848, R.C.M. 1947; redes. 95-3230 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3230.

46-23-316. Governor's report to legislature. The governor must communicate to the legislature at each regular session each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955; Sec. 94-9849, R.C.M. 1947; redes. 95-3231 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3231.

Part 4

Prisoner Furlough Program

46-23-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Applicant" means any prisoner who has signed an application to participate in the prisoner furlough program.

(2) "Board" means the board of pardons provided for in 2-15-2302.

(3) "Department" means the department of institutions provided for in 2-15-2301.

(4) "Jail" means any county jail or tribal jail.

(5) "Prisoner" means a person sentenced by a district court to a term of confinement in the state prison.

(6) "State prison" means the Montana state prison at Deer Lodge and any adult correctional facility under the direction of the department.

(7) "Supervising agency" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the furlough program.

History: En. Sec. 2, Ch. 288, L. 1969; amd. Sec. 92, Ch. 120, L. 1974; amd. Sec. 2, Ch. 496, L. 1975; R.C.M. 1947, 95-2218.

46-23-402. Purpose of prisoner furlough program. (1) The purpose and intent of this part are to:

(a) establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison, placing the establishment, regulation, guidance, and control of such program under the direction of the department of institutions;

(b) increase such prisoners' responsibility to society;

(c) make it possible for them to work gainfully to support their dependents in whole or in part while serving their sentences, continue their education or training, and at the same time fulfill the obligations of the sentence of imprisonment imposed.

(2) The prisoner furlough program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.

(3) This part is to be liberally construed to effect the overall objectives set forth in this section.

History: En. Sec. 1, Ch. 288, L. 1969; amd. Sec. 1, Ch. 496, L. 1975; R.C.M. 1947, 95-2217; amd. Sec. 30, Ch. 116, L. 1979; amd. Sec. 1, Ch. 635, L. 1979.

46-23-403. Prisoner not agent or involuntary servant. No prisoner in the community under the provisions of this part may be considered to be an agent or involuntary servant of the department or of the supervising agency while released from confinement pursuant to the terms of the furlough program. Abuse of authority over a prisoner is official misconduct punishable as provided in 45-7-401.

History: En. Sec. 8, Ch. 288, L. 1969; amd. Sec. 8, Ch. 496, L. 1975; amd. Sec. 39, Ch. 184, L. 1977; R.C.M. 1947, 95-2224.

46-23-404. No effect on eligibility for parole. Nothing in this part shall be construed to affect eligibility for parole. Time served in the furlough program shall be considered as a part of the imposed sentence of such prisoner.

History: En. Sec. 9, Ch. 288, L. 1969; R.C.M. 1947, 95-2225.

46-23-405. Establishing program — rules. The department is authorized and directed to establish a furlough program and make rules in accordance with Title 2, chapter 4, to implement and control the same. Rules shall include guidelines for:

(1) prisoner eligibility;
(2) participating in an educational, treatment, or training program;
(3) approval of supervising agency; and
(4) review of determinations in furlough application.

History: En. Secs. 3, 7, Ch. 288, L. 1969; amd. Secs. 3, 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2219, 95-2223(1); amd. Sec. 2, Ch. 635, L. 1979.

Compiler's Comments

Statement of Intent. The statement of intent attached to HB 248 (Ch. 635, L. 1979) provided: "Section 2 (section 46-23-405, MCA) directs the Department of Institutions to adopt rules which include guidelines concerning prisoner eligibility to participate in the prisoner furlough program. Such guidelines are intended to provide objective criteria for evaluating each individual's chance for success such as the type of crime for which he is incarcerated, prior felonies, revocations of parole, escapes, and time to parole eligibility. Each prisoner is to be given points under each criterion, and each criterion is to be weighted in accordance with its relative importance."

46-23-406. Cooperation of other agencies. All state, county, and local agencies shall be encouraged to cooperate in the administration of the furlough program.

History: En. Sec. 7, Ch. 288, L. 1969; amd. Sec. 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2223(2).

46-23-407 through 46-23-410 reserved.

46-23-411. Application to participate — eligibility. Any prisoner confined in the state prison, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the furlough program if he has served at least one-half of the time required to be considered for parole and qualifies under the rules established by the department.

History: En. Sec. 4, Ch. 288, L. 1969; amd. Sec. 4, Ch. 496, L. 1975; amd. Sec. 2, Ch. 580, L. 1977; R.C.M. 1947, 95-2220; amd. Sec. 3, Ch. 635, L. 1979.

46-23-412. Board's action on application. (1) At the meeting of the board following the signing of any prisoner's application, the board shall approve or deny the application of each prisoner after careful study of the prisoner's furlough plans, criminal history, and all other pertinent case material. The following rules shall be observed when the board meets to consider an application:

(a) Each applicant may call two witnesses from outside or inside the institution to testify as to the applicant's general attitude, participation in self-help activities, or his character or job references.

(b) An applicant may remain present during the board proceedings on his application; however, the board may meet in executive session without the applicant for final decision on the application.

(c) Each applicant shall be viewed singly and shall be recognized as an individual.

(d) Each applicant shall be allowed to discuss any specific problem areas with any member of the board.

(e) The board shall cause the applicant to be notified of its decision immediately and shall provide the applicant with a written decision, including a thorough statement of the reasons for the decision, within 2 days following adjournment.

(2) Final authority in all matters pertaining to prisoner furloughs is in the department.

History: **En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(1), (5).**

46-23-413. Reapplication where denied. If the application is denied, the prisoner may reapply after 6 months' time. After an applicant has been denied three times, he may appeal to the department for a hearing.

History: **En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(7).**

46-23-414. Procedure upon approval. (1) If the application is approved, the department shall, within the shortest possible time, locate an agency capable of supervising the applicant.

(2) The supervising agency, the department, and the applicant shall enter into a written agreement setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties. The agreement shall be executed, signed by the parties before a notary public, in triplicate, with one copy to be filed with the supervising agency and the department and one copy to be retained by the applicant.

(3) Upon the signing of the agreement, the prisoner shall be released to the supervising agency.

(4) When an inmate is to reside in the county or tribal jail, the consent of the sheriff or tribal chief of police in the receiving county or reservation is necessary. However, when the inmate is to reside in a community corrections center or some other supervised setting, the sheriff or tribal chief of police of the receiving county or reservation shall be notified.

History: **En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(2) thru (4), (6).**

46-23-415. Disposition of prisoner's earnings — payment of expenses. (1) A prisoner employed in the community under a work furlough plan shall enter into a written financial agreement with the supervising agency and the department concerning the acquisition and disposition of his earnings. This financial agreement shall provide for the payment of:

(a) a standard charge for providing food, lodging, and clothing for the prisoner if incurred and if applicable;

(b) the actual and necessary travel and other expenses of the prisoner under furlough from actual confinement under the program;

(c) an amount to pay for the support of his dependents, which amount shall be paid to the dependents; and

(d) an allowance for personal items and other expenses or disbursements agreed upon by the prisoner and the supervising agency.

(2) Unless the financial agreement specifically provides for other disbursement of the money, any balance remaining after deductions and payments shall be deposited to an interest-bearing account held in trust for the prisoner and shall be paid to him upon release.

(3) If no other sources of support are available, the costs of a prisoner under furlough who is in training or school shall be the responsibility of the state.

History: En. Sec. 6, Ch. 288, L. 1969; amd. Sec. 6, Ch. 496, L. 1975; R.C.M. 1947, 95-2222.

46-23-416 through 46-23-420 reserved.

46-23-421. Responsibility of department and supervising agency. The department shall be responsible for the activities of a prisoner participating in a furlough program under this part. The department may delegate jurisdictional supervision of work furlough participants to the adult parole and probation field service. The supervising agency shall be responsible for those activities of a furloughed prisoner for which it is responsible in the written furlough agreement.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(1).

46-23-422. Violation of furlough agreement by prisoner. (1) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency.

(2) If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison.

(3) At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the

prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(2); amd. Sec. 4, Ch. 635, L. 1979.

46-23-423. Immediate reincarceration if threat to community. If the department determines, after having been advised by the supervising agency or the adult parole and probation field service, that a prisoner presents an immediate grave threat to the community in which he is furloughed, it may order the prisoner returned to prison before a hearing is held. In this case, a hearing on the charges against the prisoner, as provided for in 46-23-422, must be held by the board no later than 30 days after the return of the prisoner to the state prison.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(3).

46-23-424. When prisoner dissatisfied with program. If, after a reasonable time, a furloughed prisoner determines that his furlough plan is unsatisfactory due to personality conflict, a violation of his rights by his supervisor, or a change of interest or employment status, the department shall grant him a hearing to determine whether or not a new furlough plan should be executed.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(4).

46-23-425. When prisoner not benefiting from program. (1) The prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training if the prisoner:

(a) while not disabled from working by temporary illness, is unemployed for a period of 30 days or more after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs;

(b) has become so disabled as to be unemployable; or

(c) is on an educational furlough and has demonstrated for a period of 6 weeks or more that he is unable to benefit from schooling, treatment, or training.

(2) At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference.

(3) If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to determine an alternate proposal. In this hearing the prisoner may be represented by counsel at his own expense. Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(5); amd. Sec. 5, Ch. 635, L. 1979.

46-23-426. Escape. For the purpose of this part, the provisions relating to escape in 45-7-306 shall apply unless aggravating circumstances require a more severe penalty.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(6).

Parts 5 through 9 reserved

Part 10

Supervision of Probationers and Parolees

46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

History: En. 95-3301 by Sec. 7, Ch. 333, L. 1975; R.C.M. 1947, 95-3301.

46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

History: En. 95-3302 by Sec. 8, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.

46-23-1003. Qualifications of probation and parole officers. Probation and parole officers shall have at least a college degree and shall have received at least some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

History: En. 95-3302.1 by Sec. 4, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.1.

46-23-1004. Duties of the department. The department is responsible for any investigation and supervision requested by the board or the courts. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955; Sec. 94-9828, R.C.M. 1947; redes. 95-3210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 85, Ch. 120, L. 1974; Sec. 95-3210, R.C.M. 1947; amd. and redes. 95-3303 by Sec. 9, Ch. 333, L. 1975; R.C.M. 1947, 95-3303.

46-23-1005 through 46-23-1010 reserved.

46-23-1011. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified, and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

History: En. 95-3304 by Sec. 10, Ch. 333, L. 1975; R.C.M. 1947, 95-3304.

46-23-1012. Arrest when violations of probation alleged. (1) At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court.

(2) Any probation and parole officer may arrest such defendant without a warrant or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of

detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Provisions regarding release on bail of persons charged with crime shall be applicable to the defendants arrested under these provisions.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1013. Action of court after arrest. (1) Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary.

(2) If the violation is established, the court may continue to revoke the probation or suspension of sentence and may require him to serve the sentence imposed or any lesser sentence and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(3) If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest or any part of it shall be counted as time served on probation or suspended sentence shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1014. When probationer considered a fugitive. A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court shall after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from or to have fled from justice.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1015 through 46-23-1020 reserved.

46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer, who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, and inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

History: En. 95-3306 by Sec. 11, Ch. 333, L. 1975; amd. Sec. 62, Ch. 184, L. 1977; R.C.M. 1947, 95-3306.

46-23-1022. Parole services. (1) To assist parolees the department may, in addition to other services, provide the following:

(a) employment counseling, job placement, and assistance in residential placement;

(b) family and individual counseling and treatment placement;

(c) financial counseling;

(d) vocational and educational counseling and placement; and

(e) referral services to any other state or local agencies.

(2) The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

History: En. 95-3307 by Sec. 12, Ch. 333, L. 1975; R.C.M. 1947, 95-3307.

46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return the prisoner to the actual custody of the penal institution from which he was released or to any other suitable detention facility designated by the department.

(2) Any probation and parole officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the probation and parole officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Pending hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the prisoner may, if circumstances warrant, be incarcerated in the institution.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(1).

46-23-1024. Initial hearing after arrest. (1) After the arrest of the prisoner, a hearing shall be held within a reasonable time, unless the hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(2) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to him, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as provided in 46-23-1025.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(2).

46-23-1025. Report to and action by the board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report shall be accompanied by the findings of the hearings officer.

(2) Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged under such rules as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release or enter such other order as it may see fit.

(3) If it appears that he has violated the provisions of his release, the board shall determine whether the time from the issuing of the warrant to the date of his arrest or any part of it will be counted as time served under the sentence.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(3).

46-23-1026. When prisoner considered a fugitive. A prisoner for whose return a warrant has been issued shall, after the issuance of the warrant, if it is found that the warrant cannot be served, be considered a fugitive or to have fled from justice.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(4).

Part 11

Interstate Supervision of Probation and Parole

46-23-1101. Short title. This part may be cited as the "Uniform Act for Out-of-State Parolee Supervision".

History: En. Sec. 4, Ch. 189, L. 1937; Sec. 94-7902, R.C.M. 1947; redes. 95-3202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3202.

46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms. The governor of this state is hereby authorized and directed to enter into a compact on behalf of the state of Montana with any of the United States legally joining therein in the form substantially as follows:

A COMPACT. Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act Granting the Consent of Congress to Any Two or More States to Enter into Agreements or Compacts for Cooperative Effort and Mutual Assistance in the Prevention of Crime and for Other Purposes."

The contracting states solemnly agree:

(1) that it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, if:

(a) such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) that each receiving state will assume the duties of visitation and of supervision over the probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees;

(3) that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formality will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) that the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference;

(5) that the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact;

(6) that this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) that this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

History: En. Sec. 1, Ch. 189, L. 1937; Sec. 94-7901, R.C.M. 1947; redes. 95-3201 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3201.

46-23-1103. Arranging for sending state to retake or reincarcerate violator. (1) Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever in their view consideration should be given to retaking or reincarceration for a parole or probation violation.

(2) Prior to the giving of any such notification, a hearing shall be held in accordance with this part within a reasonable time unless such hearing is waived by the parolee or probationer. Following termination of any such hearing, the appropriate officer or officers of this state shall, as soon as practicable, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state.

(3) Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow.

History: En. Sec. 1, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.1.

46-23-1104. Hearing officers — who eligible. Any hearing pursuant to this part may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

History: En. Sec. 2, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.2.

46-23-1105. Rights of parolee or probationer regarding hearing. With respect to any hearing pursuant to this part, the parolee or probationer:

(1) shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;

(2) shall be permitted to consult with any persons whose assistance he reasonably desires prior to the hearing;

(3) shall have the right to confront and examine any persons who have made allegations against him unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons;

(4) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

History: **En. Sec. 3, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.3.**

46-23-1106. Hearing in another state — record, effect. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this part, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

History: **En. Sec. 4, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.4.**

CHAPTERS 24 THROUGH 29

RESERVED

CHAPTER 30

UNIFORM CRIMINAL EXTRADITION ACT

Part 1 — General Provisions

Section
46-30-101. Definitions.
46-30-102. Nonwaiver by this state.

Part 2 — Extradition to Another State from This State

46-30-201. Fugitives from justice — duty of governor.
46-30-202. Prosecution pending in this state at time of requisition.
46-30-203. Extradition of persons who left demanding state involuntarily.
46-30-204. Extradition of persons not present in demanding state when crime committed.
Sections 46-30-205 through 46-30-210 reserved.
46-30-211. Demand — form.

46-30-212. Investigation by governor.
46-30-213. Issuance of arrest warrant by governor.
46-30-214. Recall of warrant or alias warrant.
46-30-215. Execution of warrant.
46-30-216. Authority of arresting officer.
46-30-217. Rights of accused persons — habeas corpus.
46-30-218. Penalty for violating accused's rights.
Sections 46-30-219 through 46-30-224 reserved.
46-30-225. Guilt or innocence of accused, when inquired into.
46-30-226. Confinement of accused in jail on route.
46-30-227. Arrest of accused before making of requisition.
46-30-228. Written waiver of extradition proceedings.

Part 3 — Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant.
46-30-302. Commitment to await requisition.
46-30-303. Bail while awaiting requisition.
46-30-304. Extension of time of commitment or bail.
46-30-305. Forfeiture of bail.

Part 4 — Extradition to This State from Another State

46-30-401. Application for issuance of requisition.
46-30-402. Requisition by governor.
46-30-403. Extradition of persons held in another state.
46-30-404. Immunity from service of civil process.
46-30-405. No immunity from other criminal prosecutions.
Sections 46-30-406 through 46-30-410 reserved.
46-30-411. Expenses of bringing fugitives back to this state.
46-30-412. Restrictions on compensation for assisting return of fugitive.
46-30-413. Penalty for illegal compensation.

Part 1

General Provisions

46-30-101. Definitions. Where appearing in this chapter, the term:

(1) "governor" includes any person performing the functions of governor by authority of the law of this state;

(2) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

History: En. 95-3101 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3101.

46-30-102. Nonwaiver by this state. Nothing contained in this chapter may be considered a waiver by this state of its right, power, or privilege to try the demanded person for a crime committed within this state or of its right, power, or privilege to regain custody of the person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state; nor may any proceedings had under this chapter which result in or fail to result in extradition be considered in any way a waiver by this state of any of its rights, privileges, or jurisdiction.

History: En. 95-3129 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 58, Ch. 184, L. 1977; R.C.M. 1947, 95-3129.

Part 2

Extradition to Another State from This State

46-30-201. Fugitives from justice — duty of governor. Subject to the provisions of this chapter, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime who has fled from justice and is found in this state.

History: En. 95-3102 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3102.

46-30-202. Prosecution pending in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: En. 95-3119 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3119.

46-30-203. Extradition of persons who left demanding state involuntarily. The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in 46-30-401 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-204. Extradition of persons not present in demanding state when crime committed. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in 46-30-211 with committing an act in this state or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

History: En. 95-3106 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3106.

46-30-205 through 46-30-210 reserved.

46-30-211. Demand — form. (1) No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, except in cases arising under 46-30-204, and accompanied by:

(a) a copy of an indictment found or information supported by affidavit in the state having jurisdiction of the crime;

(b) a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or

(c) a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole.

(2) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. The copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

History: En. 95-3103 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3103.

46-30-212. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

History: En. 95-3104 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3104.

46-30-213. Issuance of arrest warrant by governor. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History: En. 95-3107 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3107.

46-30-214. Recall of warrant or alias warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: En. 95-3121 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3121.

46-30-215. Execution of warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state, to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

History: En. 95-3108 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3108.

46-30-216. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest shall have the same authority to command assistance in arresting the accused as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: En. 95-3109 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3109.

46-30-217. Rights of accused persons — habeas corpus. (1) No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken without delay before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel.

(2) If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest was made and in which the accused is in custody and to the agent of the demanding state.

History: En. 95-3110 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 52, Ch. 184, L. 1977; R.C.M. 1947, 95-3110.

46-30-218. Penalty for violating accused's rights. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in willful disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned not more than 6 months, or both.

History: En. 95-3111 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3111.

46-30-219 through 46-30-224 reserved.

46-30-225. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided for in 46-30-211 has been presented to the governor except as it may be involved in identifying the person held as the person charged with the crime.

History: En. 95-3120 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 55, Ch. 184, L. 1977; R.C.M. 1947, 95-3120.

46-30-226. Confinement of accused in jail on route. (1) The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the

fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: En. 95-3112 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3112.

46-30-227. Arrest of accused before making of requisition. (1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein wherever the person may be found in this state and to bring the person before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:

(a) a person within this state is charged on the oath of a credible person before the judge or magistrate with the commission of a crime in another state and, except in cases arising under 46-30-204, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation, or parole; or

(b) a complaint is made before the judge or magistrate setting forth on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused is believed to be in this state and has been charged in the other state with:

(i) the commission of the crime and, except in cases arising under 46-30-204, having fled from justice; or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History: En. 95-3113 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 53, Ch. 184, L. 1977; R.C.M. 1947, 95-3113.

46-30-228. Written waiver of extradition proceedings. (1) Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in 46-30-213 and 46-30-215 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state. Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in 46-30-217.

(2) If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to such agent or agents a copy of such consent.

(3) Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding

state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History: **En. 95-3128 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3128.**

Part 3

Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year. When so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. Thereafter this answer shall be heard as if he had been arrested on a warrant.

History: **En. 95-3114 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3114.**

46-30-302. Commitment to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under 46-30-204, that he has fled from justice, the judge or magistrate must by a warrant reciting the accusation commit him to the county jail for such a time not exceeding 30 days and specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in 46-30-303 or until he shall be legally discharged.

History: **En. 95-3115 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3115.**

46-30-303. Bail while awaiting requisition. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking and for his surrender to be arrested upon the warrant of the governor of this state.

History: **En. 95-3116 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3116.**

46-30-304. Extension of time of commitment or bail. If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of 60 days or a supreme court justice or district court judge may again take bail for his appearance and surrender, as provided in 46-30-303, for a period not to exceed 60 days after the date of the new bond or undertaking.

History: **En. 95-3117 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 54, Ch. 184, L. 1977; R.C.M. 1947, 95-3117.**

46-30-305. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

History: En. 95-3118 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3118.

Part 4

Extradition to This State from Another State

46-30-401. Application for issuance of requisition. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged. The application shall state the name of the person charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made. It shall certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of the person. The application shall state the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including the location of the person therein at the time the application is made.

(3) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he considers proper to be submitted with the application.

(5) One copy of the application, with the action of the government indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence shall be filed in the office of the secretary of state to remain of

record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: En. 95-3123 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 56, Ch. 184, L. 1977; R.C.M. 1947, 95-3123.

46-30-402. Requisition by governor. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the chief executive of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: En. 95-3122 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3122.

46-30-403. Extradition of persons held in another state. When it is desired to have returned to this state a person charged in this state with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-404. Immunity from service of civil process. A person brought into this state on or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned until he has been convicted in the criminal proceedings or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: En. 95-3127 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3127.

46-30-405. No immunity from other criminal prosecutions. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: En. 95-3130 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3130.

46-30-406 through 46-30-410 reserved.

46-30-411. Expenses of bringing fugitives back to this state. (1) When the governor of this state, in the exercise of the authority conferred by section 2, Article IV, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the attorney general and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in returning the fugitive to this state.

History: (1)En. 95-3124 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 18, Ch. 343, L. 1977; Sec. 95-3124, R.C.M. 1947; (2)En. Sec. 1, Ch. 331, L. 1975; amd. Sec. 31, Ch. 453, L. 1977; Sec. 95-3124.1, R.C.M. 1947; R.C.M. 1947, 95-3124, 95-3124.1; amd. Sec. 3, Ch. 446, L. 1979.

46-30-412. Restrictions on compensation for assisting return of fugitive. No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 46-30-411(1), for the surrender of the fugitive, or for conveying him to this state or detaining him therein, except as provided in 46-30-411.

History: En. 95-3125 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 57, Ch. 184, L. 1977; R.C.M. 1947, 95-3125.

46-30-413. Penalty for illegal compensation. Every person who violates any of the provisions of 46-30-412 is guilty of a misdemeanor.

History: En. 95-3126 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3126.

CHAPTER 31

INTERSTATE AGREEMENT ON DETAINERS

Part 1 — Contents of Agreement

Section

46-31-101. Agreement on detainers — enactment and text.
46-31-102. Jurisdiction of district courts.

Part 2 — Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement.
46-31-202. Warden to give over inmate.
46-31-203. Coordinator of agreement.
46-31-204. Penalty for escape from custody on detainer.

Part 1

Contents of Agreement

46-31-101. Agreement on detainers — enactment and text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial at the next term of court after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall

promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be

honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability either upon his own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this chapter, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 215, L. 1963; Sec. 94-1101-1, R.C.M. 1947; redes. 95-3131 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3131.

46-31-102. Jurisdiction of district courts. The phrase "appropriate court", as used in the agreement on detainers, shall with reference to the courts of this state mean district courts.

History: En. Sec. 2, Ch. 215, L. 1963; Sec. 94-1101-2, R.C.M. 1947; redes. 95-3132 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3132.

Part 2

Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement. All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: En. Sec. 3, Ch. 215, L. 1963; Sec. 94-1101-3, R.C.M. 1947; redes. 95-3133 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3133.

46-31-202. Warden to give over inmate. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: En. Sec. 5, Ch. 215, L. 1963; Sec. 94-1101-5, R.C.M. 1947; redes. 95-3135 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3135.

46-31-203. Coordinator of agreement. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules to carry out more effectively the terms and provisions of this chapter and who shall provide within and without the state information necessary to the effective operation of this agreement.

History: En. Sec. 6, Ch. 215, L. 1963; Sec. 94-1101-6, R.C.M. 1947; redes. 95-3136 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3136.

46-31-204. Penalty for escape from custody on detainer. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information, or complaint and who escapes therefrom is punishable by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: En. Sec. 4, Ch. 215, L. 1963; Sec. 94-1101-4, R.C.M. 1947; redes. 95-3134 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3134.

TITLES 47 AND 48

RESERVED

TITLE 49

HUMAN RIGHTS

Ch.
1. Basic Rights.
2. Illegal Discrimination.
3. Governmental Code of Fair Practices.
4. Rights of the Handicapped.

CHAPTER 1

BASIC RIGHTS

Part 1 — Basic Personal Rights

Section
49-1-101. Right of protection from personal injury.
49-1-102. Freedom from discrimination.
49-1-103. Right to use force.

Part 2 — Basic Political Rights

49-1-201. Right to state's protection.
49-1-202. Right to hold elected office.
49-1-203. Rights and duties of nonelectors.
49-1-204. Rights and duties of citizens of other states.

Part 1

Basic Personal Rights

49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations.

History: En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R.C.M. 1921; Cal. Civ. C. Sec. 43; Field Civ. C. Sec. 27; re-en. Sec. 5688, R.C.M. 1935; R.C.M. 1947, 64-201; amd. Sec. 1, Ch. 177, L. 1979.

49-1-102. Freedom from discrimination. The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right shall include but not be limited to:

(1) the right to obtain and hold employment without discrimination; and

(2) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

History: En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977; R.C.M. 1947, 64-301.

49-1-103. Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, of a wife, husband, child, parent, or other relative or member of one's family, or of a ward, servant, master, or guest.

History: En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R.C.M. 1921; Cal. Civ. C. Sec. 50; Based on Field Civil C. Sec. 33; re-en. Sec. 5694, R.C.M. 1935; R.C.M. 1947, 64-210.

Part 2

Basic Political Rights

49-1-201. Right to state's protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R.C.M. 1921; Cal. Pol. C. Sec. 54; re-en. Sec. 34, R.C.M. 1935; R.C.M. 1947, 83-401.

49-1-202. Right to hold elected office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R.C.M. 1921; Cal. Pol. C. Sec. 58; re-en. Sec. 38, R.C.M. 1935; R.C.M. 1947, 83-405.

49-1-203. Rights and duties of nonelectors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R.C.M. 1921; Cal. Pol. C. Sec. 59; re-en. Sec. 39, R.C.M. 1935; R.C.M. 1947, 83-406.

49-1-204. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R.C.M. 1921; Cal. Pol. C. Sec. 60; re-en. Sec. 40, R.C.M. 1935; R.C.M. 1947, 83-407.

CHAPTER 2

ILLEGAL DISCRIMINATION

Part 1 — General Provisions

Section
49-2-101. Definitions.
49-2-102. Records to be kept.

Part 2 — Commission for Human Rights

49-2-201. Commission staff.
49-2-202. Authority to require posted notice.
49-2-203. Subpoena power.
49-2-204. Commission to adopt rules.

Part 3 — Prohibited Discriminatory Practices

49-2-301. Retaliation prohibited.

49-2-302. Aiding, coercing, or attempting.
49-2-303. Discrimination in employment.
49-2-304. Discrimination in public accommodations.
49-2-305. Discrimination in housing.
49-2-306. Discrimination in financing and credit transactions.
49-2-307. Discrimination in education.
49-2-308. Discrimination by the state.

Part 4 — Exceptions to Prohibitions

49-2-401. Procedure for claiming exemption.
49-2-402. "Reasonable" to be strictly construed.
49-2-403. Specific limits on justification.
49-2-404. Distinctions permitted for modesty or privacy.

Part 5 — Enforcement by Commission

49-2-501. Filing complaints.
49-2-502. Notification of and action by commission.
49-2-503. Temporary relief by court order.
49-2-504. Informal settlement.
49-2-505. Contested case hearing.
49-2-506. Procedure upon a finding of discrimination.
49-2-507. Procedure upon failure to find discrimination.
49-2-508. Injunction to enforce commission order.

Part 6 — Penalties

49-2-601. Criminal penalty.

Part 1

General Provisions

49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(14) "National origin" means ancestry.

(15) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(16) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(17) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(18) "Staff" or "commission staff" means the staff of the commission for human rights.

History: En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977; R.C.M. 1947, 64-305; amd. Sec. 2, Ch. 177, L. 1979.

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).

Part 2

Commission for Human Rights

49-2-201. Commission staff. (1) The staff may include an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, assist in the preparation and presentation of complaints to the commission, and represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

(2) In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.

History: (1)En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975; Sec. 64-311, R.C.M. 1947;(2)En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; Sec. 64-308, R.C.M. 1947; R.C.M. 1947, 64-308(part), 64-311.

49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313.

49-2-204. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this chapter.

Rulemaking procedures shall comply with the requirements of the Montana Administrative Procedure Act.

History: **En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315.**

Part 3

Prohibited Discriminatory Practices

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: **(1)En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; (2)En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979.**

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: **En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. Sec. 5, Ch. 177, L. 1979.**

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, marital status, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, marital status, creed, religion, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

History: **En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2).**

49-2-304. Discrimination in public accommodations. Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(1) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin.

History: **En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3).**

49-2-305. Discrimination in housing. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property; or

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of this section.

History: **En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979.**

49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8).

49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(7).

49-2-308. Discrimination by the state. It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(1) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(3) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected

officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(6).

Part 4

Exceptions to Prohibitions

49-2-401. Procedure for claiming exemption. A person, educational institution, financial institution, or governmental entity or agency who or which seeks to be exempted from the requirements of part 3 of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for granting an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed, and the burden is on the petitioner to demonstrate that an exemption should be granted.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

49-2-402. "Reasonable" to be strictly construed. Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(10).

49-2-403. Specific limits on justification. (1) Sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(1), (2).

49-2-404. Distinctions permitted for modesty or privacy. Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(3).

Part 5

Enforcement by Commission

49-2-501. Filing complaints. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) A complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. Any complaint not filed within the time set forth herein may not be considered by the commission.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(1); amd. Sec. 8, Ch. 177, L. 1979.

49-2-502. Notification of and action by commission. The staff shall notify the commission in writing of all complaints filed with the commission. The commission shall meet a minimum of four times a year to hear and act upon all complaints filed.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(part).

49-2-503. Temporary relief by court order. (1) At any time after a complaint is filed under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs or in the county in which a respondent resides or transacts business seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(3).

49-2-504. Informal settlement. The commission staff shall informally investigate the matters set out in a filed complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4).

49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing must be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, institution, entity, or agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act except as provided in 49-2-508.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorneys' fees. The court in its discretion may allow the prevailing party reasonable attorneys' fees. An action under this section must comply with the Montana Rules of Civil Procedure.

History: **En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(5), (6); amd. Sec. 9, Ch. 177, L. 1979; amd. Sec. 1, Ch. 709, L. 1979.**

49-2-506. Procedure upon a finding of discrimination. (1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years.

History: **En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(1), (2), (4); amd. Sec. 10, Ch. 177, L. 1979.**

49-2-507. Procedure upon failure to find discrimination. If the commission finds that a person, institution, entity, or agency against whom or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: **En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.**

49-2-508. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

History: **En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310.**

Part 6

Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

CHAPTER 3

GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 — General Provisions

Section
49-3-101. Definitions.
49-3-102. What local governmental units affected.
49-3-103. Permitted distinctions.
49-3-104. Quotas not required.

Part 2 — Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel.
49-3-202. Employment referrals and placement services.
49-3-203. Educational, counseling, and training programs.
49-3-204. Licensing.
49-3-205. Governmental services.
49-3-206. Distribution of governmental funds.
49-3-207. Nondiscrimination provision in all public contracts.
49-3-208. Public accommodations laws.

Part 3 — Enforcement and Remedies

49-3-301. Cooperation with commission for human rights.
49-3-302. Annual reports to governor.
49-3-303. Remedies for individuals.

Part 1

General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "State and local governmental agencies" means:

(a) all branches, departments, offices, boards, bureaus, commissions, agencies, university units, colleges, and other instrumentalities of state government; and

(b) counties, cities, towns, school districts, and other units of local government and all instrumentalities of local government.

(2) "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

(1) from enforcing a differentiation based on age or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(3) from discharging or otherwise disciplining an individual for good cause.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328.

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

Part 2

Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979.

49-3-202. Employment referrals and placement services. (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing such programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Such programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979.

49-3-204. Licensing. No state or local governmental agency may grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979.

49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979.

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324.

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services shall contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the contract.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979.

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

Part 3

Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: **En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.**

49-3-302. Annual reports to governor. All state governmental agencies which report to the governor shall include in their annual reports to the governor activities undertaken in the past year to effectuate this chapter. Such reports shall cover both internal activities and external relations with the public or with other state agencies and shall contain other information as specifically requested by the governor.

History: **En. 64-326 by Sec. 11, Ch. 487, L. 1975; R.C.M. 1947, 64-326; amd. Sec. 21, Ch. 177, L. 1979.**

49-3-303. Remedies for individuals. (1) Any person claiming to be aggrieved by a violation of any provision of this chapter may file a complaint for redress of the violation with the commission for human rights and upon filing that complaint may, in addition, petition the district court in the district where the complainant resides or where the alleged violation occurred for appropriate relief. The court may grant such relief, by injunction or otherwise, as it considers appropriate. Commencement of the administrative remedy does not preclude the judicial remedy.

(2) Actions under this section are original actions.

History: **En. 64-329 by Sec. 14, Ch. 487, L. 1975; R.C.M. 1947, 64-329.**

CHAPTER 4

RIGHTS OF THE HANDICAPPED

Part 1 — Discrimination in Employment

Section

49-4-101. Discrimination prohibited.
49-4-102. Penalty and civil remedy.

Part 2 — Rights of the Visually Handicapped

49-4-201. Short title.
49-4-202. Policy of the state.
49-4-203. Definition.
Sections 49-4-204 through 49-4-210 reserved.
49-4-211. Right to use public places and accommodations.
49-4-212. Access to housing accommodations.
49-4-213. Use of white or metallic-colored canes restricted to the blind.
49-4-214. Right to be accompanied by a guide dog.
49-4-215. Penalty for violating rights.
49-4-216. Duty and civil liability of pedestrian or driver approaching blind person.
49-4-217. Penalty for violation of duty or unauthorized use of cane.

Part 3 — Use of Public Streets

49-4-301. Who eligible for special parking permit.
49-4-302. Privileges of permit holder.
49-4-303. Applications for permit.
49-4-304. Card to be provided and displayed.

49-4-305. Expiration of permit.
Sections 49-4-306 through 49-4-310 reserved.
49-4-311. Use of motorized wheelchairs on public streets.
49-4-312. Regulation by municipalities.

Part 4 — Preference in Leasing of Concessions

49-4-401. Definitions.
49-4-402. Preference to handicapped required.
49-4-403. Transfer of lease prohibited.
49-4-404. Department to ensure compliance.
49-4-405. Rulemaking.
49-4-406. Enforcement.

Part 5 — Interpreters for the Deaf in Official Proceedings

49-4-501. Policy.
49-4-502. Definitions.
49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used.
49-4-504. Preliminary determination.
49-4-505. Intermediary interpreter to be used.
49-4-506. Interpreter in full view.
49-4-507. Coordination of interpreter requests.
49-4-508. Oath of interpreter.
49-4-509. Compensation.
49-4-510. Waiver.
49-4-511. Privileged communications.

Part 1

Discrimination in Employment

49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

Part 2

Rights of the Visually Handicapped

49-4-201. Short title. This part may be cited as the "White Cane Act".

History: En. Sec. 1, Ch. 181, L. 1971; R.C.M. 1947, 71-1303.

49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

History: En. Sec. 2, Ch. 181, L. 1971; R.C.M. 1947, 71-1304.

49-4-203. Definition. "Housing accommodation" means any real property or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings but does not include any single-family residence the occupants of which furnish for compensation not more than one room therein.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(2).

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations. (1) The blind and the visually handicapped have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind and the visually handicapped are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(2), (3); amd. Sec. 22, Ch. 177, L. 1979.

49-4-212. Access to housing accommodations. (1) Blind persons and visually handicapped persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind person or a visually handicapped person than for a person who is not so disabled.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(1), (3).

49-4-213. Use of white or metallic-colored canes restricted to the blind. No person, except those wholly or partially blind, shall carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color or white or metallic tipped with red.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(1).

49-4-214. Right to be accompanied by a guide dog. (1) Every totally or partially blind person has the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places mentioned in 49-4-211(2) without being charged extra for the guide dog. He is liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind person who has a guide dog or who obtains a guide dog is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. He may not be required to pay extra compensation for the guide dog but is liable for any damage done to the premises by the guide dog.

History: En. Sec. 4, Ch. 181, L. 1971; amd. Sec. 2, Ch. 266, L. 1975; R.C.M. 1947, 71-1306; amd. Sec. 23, Ch. 177, L. 1979.

49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 266, L. 1975; R.C.M. 1947, 71-1309.

49-4-216. Duty and civil liability of pedestrian or driver approaching blind person. (1) A pedestrian who is not totally or partially blind or a driver of a vehicle who approaches or comes in contact with a person who is totally or partially blind and is carrying a cane or walking stick predominately white or metallic in color or white tipped with red or is being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of such blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to such blind person.

(2) A driver or pedestrian who fails to take such precautions is liable in damages for any injury caused the totally or partially blind person. A totally or partially blind pedestrian who is not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 has all of the rights and privileges conferred by law upon other persons, and the failure of such a pedestrian to carry such a cane or to use a guide dog in any such place may not be held to constitute or be evidence of contributory negligence.

History: En. Sec. 5, Ch. 181, L. 1971; amd. Sec. 3, Ch. 266, L. 1975; R.C.M. 1947, 71-1307; amd. Sec. 24, Ch. 177, L. 1979.

49-4-217. Penalty for violation of duty or unauthorized use of cane. Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this part, contrary to the provisions of this part, or who shall fail to heed the approach of a person carrying such a cane as is described by this part or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick or being led by a trained guide dog or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor punishable by a fine not to exceed $25.

History: En. Sec. 6, Ch. 181, L. 1971; R.C.M. 1947, 71-1308.

Part 3

Use of Public Streets

49-4-301. Who eligible for special parking permit. (1) The division of motor vehicles, department of justice, shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap that impairs his mobility when not in a motor vehicle; or

(b) regardless of whether he holds a driver's license or owns a motor vehicle, has a permanent physical handicap that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination.

(2) No one applicant may receive more than one permit.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(1), (6).

49-4-302. Privileges of permit holder. The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(2).

49-4-303. Applications for permit. (1) Applications for a special parking permit may be made to the division of motor vehicles on forms provided by the division, which must require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications shall be available at the office of the county treasurer in each county and directly from the division.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(4), (5).

49-4-304. Card to be provided and displayed. The division of motor vehicles shall provide a card or plate that may be displayed in a motor vehicle to indicate a parking privilege granted under this part. The card or plate shall be prominently displayed in the windshield of a vehicle when the parking privilege is being used.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(3).

49-4-305. Expiration of permit. A permit expires on December 31 of the year of issue.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(7).

49-4-306 through 49-4-310 reserved.

49-4-311. Use of motorized wheelchairs on public streets. A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle during daylight hours on the streets of a city or town. When operated on public streets, such vehicles must display the slow moving equipment emblem required in 61-9-415(2) or be equipped with a windwhip displaying a red flag.

History: **En. 11-911.1 by Sec. 2, Ch. 369, L. 1974; R.C.M. 1947, 11-911.1.**

49-4-312. Regulation by municipalities. Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

History: **En. 11-911.2 by Sec. 3, Ch. 369, L. 1974; R.C.M. 1947, 11-911.2.**

Part 4

Preference in Leasing of Concessions

49-4-401. Definitions. For purposes of this part the following definitions apply:

(1) "Blind person" means one who has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential.

(2) "Department" means the department of social and rehabilitation services.

History: **En. Sec. 2, Ch. 66, L. 1951; R.C.M. 1947, 71-1302; amd. Sec. 1, Ch. 474, L. 1979.**

49-4-402. Preference to handicapped required. Whenever any room, corridor, or other part of or space in any public building owned or controlled by the state of Montana or any agency thereof or owned or controlled by any county, city, or other political subdivision of said state shall be leased, licensed, or otherwise made available to private persons for use as a vending stand or other similar commercial enterprise, blind persons and persons disabled by loss of limb or other physical impairment shall have and be given the first right and preference to such commercial use thereof.

History: **En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).**

49-4-403. Transfer of lease prohibited. Every lease, license, or other contract which may be made pursuant to this part and for the purpose of allowing a preference to a blind or disabled person shall prohibit the transfer by sublease, assignment, or otherwise of the right acquired.

History: **En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).**

49-4-404. Department to ensure compliance. The department shall monitor and ensure compliance with this part.

History: **En. Sec. 2, Ch. 474, L. 1979.**

Compiler's Comments

Codification. Sec. 5, Ch. 474, L. 1979, provided: "Sections 2 through 4 are intended to be codified in Title 49, chapter 4, part 4, and the provisions of Title 49, chapter 4, part 4, apply to sections 2 through 4. All references in the MCA to Title 49, chapter 4, part 4, include those sections."

49-4-405. Rulemaking. (1) The department may adopt rules setting forth criteria and procedures to be followed by state agencies and political subdivisions in granting concessions under this part.

(2) The department may adopt such other rules as are reasonably necessary to effectuate the purposes of this part.

(3) All such rules must be adopted in accordance with the Montana Administrative Procedure Act.

History: **En. Sec. 3, Ch. 474, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent adopted with HB 342 (Ch. 474, L. 1979) provided: "A statement of intent is required for this bill because it amends section 49-4-401, MCA, to give the Department of Social and Rehabilitation Services rulemaking authority that is necessary to enforce the provisions of Title 49, Chapter 4, part 4, MCA.

Title 49, chapter 4, part 4, MCA, provides that blind and physically handicapped persons have a first right and preference in the letting of vending concessions in public buildings in Montana. However, there is presently no enforcement mechanism included in the law. HB 342 directs the Department of Social and Rehabilitation Services to develop effective rules to implement this law. The rules should be directed toward the process by which vending concessions are let, interaction of vending concessions with rehabilitation programs, and remedies of persons aggrieved by a violation of the law or rules. It is the intent of the Legislature that the rules should be designed to foster the active and productive employment of blind and disabled persons in the management, servicing and maintenance of vending concessions and in the sale of products through the concessions. The rules should not permit a system of authorization which encourages passive earning, delegation of vending rights, or any other system of management inconsistent with the provision of active employment to blind and disabled persons. Additional rules may be adopted to enforce the law if necessary.

In the development of rules under this law, it is the intent of the Legislature that the Department work with the Division of Visual Services and other appropriate administrative units in the Department to propose and implement the rules."

49-4-406. Enforcement. The department may seek an injunction or writ of mandate in Lewis and Clark County or the county in which the public building involved is located to enforce this part or rules adopted under it.

History: En. Sec. 4, Ch. 474, L. 1979.

Part 5

Interpreters for the Deaf in Official Proceedings

49-4-501. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

History: En. Sec. 1, Ch. 245, L. 1979.

Compiler's Comments

Severability. Sec. 12, Ch. 245, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective date. Sec. 14, Ch. 245, L. 1979, provided: "This act is effective on passage and approval." Approved March 23, 1979.

49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(4) "Qualified interpreter" means an interpreter listed by the department of social and rehabilitation services as provided in 49-4-507.

(5) "Intermediary interpreter" means a knowledgeable deaf person who, because of his intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

History: **En. Sec. 2, Ch. 245, L. 1979.**

49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

History: **En Sec. 3, Ch. 245, L. 1979.**

49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

History: **En Sec. 4, Ch. 245, L. 1979.**

49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

History: **En Sec. 5, Ch. 245, L. 1979.**

49-4-506. Interpreter in full view. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

History: **En Sec. 6, Ch. 245, L. 1979.**

49-4-507. Coordination of interpreter requests. (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of social and rehabilitation services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of social and rehabilitation services with a list of qualified and available interpreters.

(3) The only function of the department of social and rehabilitation services is to maintain the list referred to in subsection (2).

History: **En Sec. 7, Ch. 245, L. 1979.**

49-4-508. Oath of interpreter. Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

History: **En Sec. 8, Ch. 245, L. 1979.**

49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

History: **En Sec. 9, Ch. 245, L. 1979.**

49-4-510. Waiver. The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

History: **En Sec. 10, Ch. 245, L. 1979.**

49-4-511. Privileged communications. Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

History: **En Sec. 11, Ch. 245, L. 1979.**

TITLE 50

HEALTH AND SAFETY

Ch.
1. Department and Board of Health and Environmental Sciences.
2. Local Boards of Health.
3. Fire Marshal Bureau.

Chapter 4 reserved.

5. Hospitals and Related Facilities.
6. Emergency Medical Services.
7. Home Health Agencies. Repealed. Sec. 27, Ch. 347, L. 1979.

Chapters 8 through 14 reserved.

15. Vital Statistics.
16. Health Care Information.
17. Tuberculosis Control.
18. Venereal Disease.
19. Pregnant Women and Newborn Infants.
20. Abortion.
21. Cadavers and Autopsies.
22. Determination of Death.

Chapters 23 through 29 reserved.

30. Consumer Product Safety Act.
31. Montana Food, Drug, and Cosmetic Act.
32. Controlled Substances.
33. Blood and Blood Products.
34. Flour and Bread.
35. Imported Meats.
36. Mattresses — Shoddy Control.
37. Fireworks.
38. Explosives.
39. Fire Protection Equipment.
40. Smoking in Public Places.
41. Laetrile.

Chapters 42 through 49 reserved.

50. Food Establishments.
51. Hotels, Motels, and Roominghouses.
52. Tourist Campgrounds and Trailer Courts.
53. Public Swimming Pools and Swimming Areas.

Chapters 54 through 59 reserved.

60. Building Construction Standards.
61. Fire Safety in Public Buildings.
62. Fire Hazards.
63. Investigation of Fires.
64. Asbestos Regulation in Building Construction and Demolition.

Chapters 65 through 69 reserved.

70. Occupational Health.
71. Occupational Safety.
72. Safety in Mines Other Than Coal Mines.
73. Safety in Coal Mines.
74. Boilers and Steam Engines.
75. Consolidation of Boiler, Mine, and Coal Mine Inspectors.
76. Hoisting Engines.
77. Construction Site Health and Safety.

CHAPTER 1

DEPARTMENT AND BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

Part 1 — General Provisions

Section
50-1-101. Definitions.
50-1-102. Legal adviser to board and department.
50-1-103. Enforcement of public health laws.
50-1-104. General penalty.

Part 2 — Department

50-1-201. Administration of state health plan.
50-1-202. General powers and duties.
50-1-203. Sanitary inspections.
50-1-204. Quarantine measures.
50-1-205. Repealed. Sec. 2, Ch. 219, L. 1979.
50-1-206. Regulation of schools in matters of health.

Part 3 — Board

50-1-301. Duties of board.
50-1-302. Board meetings.

Part 1

General Provisions

50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Communicable disease" means a disease designated communicable by the department.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

History: En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; R.C.M. 1947, 69-4102.

50-1-102. Legal adviser to board and department. The attorney general is legal adviser to the board and department. If the county attorney fails to act and with the approval of the attorney general, the department may retain special counsel and compensate him from appropriations to the department.

History: En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part).

50-1-103. Enforcement of public health laws. (1) Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the board or the department, the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the board or department.

History: **En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part).**

50-1-104. General penalty. Anyone who violates a rule adopted by the board or the department for which no penalty is specified is guilty of a misdemeanor.

History: **En. Sec. 221, Ch. 197, L. 1967; amd. Sec. 82, Ch. 349, L. 1974; R.C.M. 1947, 69-5701.**

Part 2

Department

50-1-201. Administration of state health plan. The department is hereby established as the sole and official state agency to administer the state program for comprehensive health planning and is hereby authorized to prepare a plan for comprehensive state health planning. The department is authorized to confer and cooperate with any and all other persons, organizations, or governmental agencies that have an interest in public health problems and needs. The department, while acting in this capacity as the sole and official state agency to administer and supervise the administration of the official comprehensive state health plan, is designated and authorized as the sole and official state agency to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, bequeathed, or appropriated to it for the preparation and administration and the supervision of the preparation and administration of the comprehensive state health plan.

History: **En. 69-4110.1 by Sec. 1, Ch. 184, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4110.1.**

50-1-202. General powers and duties. The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop and administer a program to protect the health of mothers and children;

(10) conduct health education programs;

(11) provide consultation to school and local community health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop and administer a program for services to handicapped children including diagnosis, medical, surgical, and corrective treatment, and after-care and related services;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) adopt rules imposing fees for the tests and services performed by the laboratory of the department. In adopting a rule imposing fees, the department may establish only a fee that will reimburse the department for the costs incurred in performing tests and services. All fees shall be deposited in the general fund.

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies.

History: En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974; amd. Sec. 1, Ch. 288, L. 1977; R.C.M. 1947, 69-4110; amd. Sec. 7, Ch. 200, L. 1979; amd. Sec. 1, Ch. 219, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 219, L. 1979, provided: "A statement of intent is required for this bill because it amends section 50-1-202, MCA, to confirm the Department of Health and Environmental Sciences rulemaking authority regarding communicable diseases and the transportation of dead human bodies.

HB 166 intends that the Department of Health and Environmental Sciences have the authority to require by rule, in accordance with the Montana Administrative Procedure Act, the reporting to public health officials of communicable diseases by persons having knowledge of the occurrence of a case or suspected case, so that appropriate investigations and control measures may be specified and implemented to protect the public health. In addition, the Department shall also have the authority to amend and update existing rules, and to adopt new rules, in accordance with the Montana Administrative Procedure Act, as may be needed to ensure that reporting and methods of control of communicable diseases meet the standards of current, preferred medical and public health practice.

In this same spirit, the Department shall also adopt rules to protect the public against possible communicable hazards of dead human bodies.

By way of illustration, the following categories of rules are examples of topics that need to be addressed:

1. Definitions (For example, the terms carrier, quarantine, immunization, etc. need specific definitions.)

2. Designation of communicable diseases to be reported. (For example, measles, legionnaires disease, influenza, typhoid, etc.)
3. Form and procedure for reporting communicable diseases.
4. Confidentiality and access to records.
5. Types of quarantine and isolation.
6. Procedures for establishing and removing quarantine.
7. Conduct of transport, funeral, and burial of dead human bodies.
8. Specific control measures for specific diseases (for example, control measures for measles would be different from dysentery.)"

50-1-203. Sanitary inspections. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the department or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967; amd. Sec. 1, Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4118.

50-1-204. Quarantine measures. The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than $10 or more than $100. Receipts from fines shall be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974; R.C.M. 1947, 69-4112.

50-1-205. Repealed. Sec. 2, Ch. 219, L. 1979.

50-1-206. Regulation of schools in matters of health. (1) The department shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools.

(2) The department shall furnish to the districts copies of such regulations.

History: En. 75-8207 by Sec. 479, Ch. 5, L. 1971; amd. Sec. 12, Ch. 504, L. 1977; R.C.M. 1947, 75-8207.

Part 3

Board

50-1-301. Duties of board. The board shall:

(1) advise the department in public health matters;

(2) hold hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board.

History: En. Sec. 6, Ch. 197, L. 1967; amd. Sec. 28, Ch. 93, L. 1969; amd. Sec. 30, Ch. 349, L. 1974; R.C.M. 1947, 69-4106.

50-1-302. Board meetings. (1) The board may adopt bylaws governing meetings.

(2) The director of health and environmental sciences shall serve as secretary to the board.

(3) The board shall meet once every two months and may hold additional meetings on the call of the chair, at the request of the director of health and environmental sciences, or at the request of a majority of the members.

(4) If a member has three unexcused absences from meetings in a calendar year, his position is vacant and the governor shall appoint a person to replace him.

(5) In suits or proceedings in which board actions are the subject of inquiry, meetings shall be considered to have been called and held unless the contrary is proven.

History: **En. Sec. 4, Ch. 197, L. 1967; amd. Sec. 29, Ch. 349, L. 1974; R.C.M. 1947, 69-4104.**

CHAPTER 2

LOCAL BOARDS OF HEALTH

Part 1 — General Provisions

Section

50-2-101. Definitions.
50-2-102. Repealed. Sec. 9, Ch. 200, L. 1979.
50-2-103. Federal funds.
50-2-104. County boards of health.
50-2-105. City boards of health.
50-2-106. City-county boards of health.
50-2-107. District boards of health.
50-2-108. Financing of local boards.
50-2-109. County board appropriations.
50-2-110. City board appropriations.
50-2-111. City-county board appropriations.
50-2-112. District board appropriations.
50-2-113. Contributions by school boards and other agencies authorized.
50-2-114. Special mill levy.
50-2-115. Legal adviser to local boards.
50-2-116. Powers and duties of local boards.
50-2-117. Appointment of local health officer by department when not made by local board.
50-2-118. Powers and duties of local health officers.
50-2-119. Nursing services.
50-2-120. Assistance from law enforcement officials.
50-2-121. Removal of diseased prisoner from jail by local health officer.
50-2-122. Obstructing local health officer in the performance of his duties unlawful.
50-2-123. Compliance order authorized.
50-2-124. Penalties for violations.

Part 1

General Provisions

50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated communicable by the department.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state.

History: Ap. p. Sec. 78, Ch. 197, L. 1967; Sec. 69-4501, R.C.M. 1947; (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; R.C.M. 1947, 69-4102(2), (3), 69-4501.

50-2-102. Repealed. Sec. 9, Ch. 200, L. 1979.

50-2-103. Federal funds. The department may accept funds for public health from an agency of the federal government or from any other agency or person and allocate funds to local boards.

History: En. Sec. 80, Ch. 197, L. 1967; amd. Sec. 55, Ch. 349, L. 1974; R.C.M. 1947, 69-4503.

50-2-104. County boards of health. (1) There is a county board of health in each county consisting of:

(a) the county commissioners and two members who are appointed by the county commissioners and serve at their pleasure; or

(b) five persons who are appointed by the county commissioners and serve at their pleasure.

(2) Terms of appointed members shall be staggered and be for 3 years each.

(3) The county commissioners shall establish the staggered order of terms and all rules necessary to establish and maintain the board.

History: En. Sec. 81, Ch. 197, L. 1967; amd. Sec. 1, Ch. 216, L. 1969; amd. Sec. 20, Ch. 187, L. 1977; R.C.M. 1947, 69-4504.

50-2-105. City boards of health. (1) There is a city board of health in each first- and second-class city consisting of five persons who are appointed by the governing body of the city and serve at its pleasure.

(2) Terms of appointed members shall be staggered and shall be for 3 years each.

(3) The governing body of the city shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 82, Ch. 197, L. 1967; amd. Sec. 2, Ch. 216, L. 1969; R.C.M. 1947, 69-4505.

50-2-106. City-county boards of health. (1) By mutual agreement between the county commissioners and the governing body of the city, the county and a first- or second-class city or cities may form a city-county board of health.

(2) A city-county board of health consists of:

(a) one person appointed by the county commissioners who serves at their pleasure;

(b) one person appointed by the governing body of each city that participates in the city-county board who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners and governing body or bodies of the city or cities participating in the city-county board as mutually agreed upon who serve at the pleasure of the appointing commissioners or governing body.

(3) The board shall be composed of at least five persons. Terms of appointed members shall be staggered and shall be for 3 years each.

(4) By mutual agreement between the county commissioners and the governing body of the city, they shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 83, Ch. 197, L. 1967; amd. Sec. 3, Ch. 216, L. 1969; R.C.M. 1947, 69-4506.

50-2-107. District boards of health. (1) By mutual agreement, two or more adjacent counties may unite to create a district board of health. First- and second-class cities located in those counties may elect to be included in the district.

(2) A district board of health consists of:

(a) one person appointed by the county commissioners of each county in the district who serves at the pleasure of the appointing commissioners;

(b) one person appointed by the governing body of each city that elects to be included in the district who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners of each county that participates in the district board as mutually agreed upon who serve at the pleasure of the appointing commissioners.

History: En. Sec. 84, Ch. 197, L. 1967; R.C.M. 1947, 69-4507.

50-2-108. Financing of local boards. Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(1).

50-2-109. County board appropriations. County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(a).

50-2-110. City board appropriations. City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(b).

50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money shall be deposited with the county treasurer who shall disburse them as county funds.

(2) (a) In first- and second-class counties, the county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) The county's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23. If the 5-mill levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Each participating city's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money shall be deposited with the county treasurer who shall disburse them as county funds.

(e) The special levies authorized by this subsection are in addition to all other levies authorized by law.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(c).

50-2-112. District board appropriations. (1) District boards are financed by appropriations from the general funds of each county in the district in proportion to the population in each county.

(2) First- and second-class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under 50-2-111.

(3) All funds shall be deposited with the county treasurer of one of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(d).

50-2-113. Contributions by school boards and other agencies authorized. School boards and other official and nonofficial agencies may contribute funds to a local board.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(3).

50-2-114. Special mill levy. If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than 1 mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This section does not apply when the board has been financed under 50-2-111(2).

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(4).

50-2-115. Legal adviser to local boards. The county attorney shall serve as legal adviser to local boards as established by 50-2-104 and 50-2-106. The county attorney shall represent the local board in those matters relating to the functions, powers, and duties of local boards.

History: En. 69-4508.1 by Sec. 1, Ch. 273, L. 1975; R.C.M. 1947, 69-4508.1.

50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the department and fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth which cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things which are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places which are infected with communicable diseases;

(e) require and provide means for disinfecting places which are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings not currently connected to any municipal system (fees shall be deposited with the county treasurer);

(k) adopt rules which do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth which might cause disease or adversely affect public health;

(iii) on sanitation in public buildings which affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations which might endanger human lives.

History: En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971; amd. Secs. 108, 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 273, L. 1975; R.C.M. 1947, 69-4509.

50-2-117. Appointment of local health officer by department when not made by local board. (1) If the county commissioners or governing body of a first- or second-class city do not appoint a health officer, the department may appoint a health officer 30 days after notification in writing has been given to the county commissioners or governing body of the city.

(2) A health officer appointed by the department has the same authority as a health officer appointed by a local board.

History: En. Sec. 88, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4511.

50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of his appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50, 51, and 52 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician shall not act as a physician to anyone.

History: En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971; amd. Sec. 56, Ch. 349, L. 1974; R.C.M. 1947, 69-4510; amd. Sec. 1, Ch. 200, L. 1979.

50-2-119. Nursing services. (1) A local board may employ a qualified nurse for nursing services to persons under a physician's care who are confined to their homes.

(2) Before nursing services are provided, a physician must:

(a) determine that the person needs the services of a visiting nurse;

(b) direct the nurse to visit the person;

(c) specify the type and duration of services to be performed by the nurse.

(3) Persons shall pay for the services at rates set by the local board. Local boards, on behalf of persons receiving services, may accept payment from persons or public agencies either directly from or by contract with the person or agency. All payments received shall be deposited in a special county or city fund and used to defray expenses of providing the service.

History: En. Sec. 89, Ch. 197, L. 1967; R.C.M. 1947, 69-4512.

50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other peace officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office.

History: En. Sec. 90, Ch. 197, L. 1967; R.C.M. 1947, 69-4513; amd. Sec. 1, Ch. 37, L. 1979.

50-2-121. Removal of diseased prisoner from jail by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners may be removed to a hospital or other place of safety.

(2) If the prisoner was committed to jail by order of court, the order for removal and treatment shall be signed by the local health officer and filed with the court.

(3) When the prisoner recovers from the disease, he shall be returned to the jail.

(4) A prisoner removed to a hospital or clinic for treatment shall not be considered to have committed an escape.

History: En. Sec. 93, Ch. 197, L. 1967; R.C.M. 1947, 69-4516.

50-2-122. Obstructing local health officer in the performance of his duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of his duties under this chapter;

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation.

History: En. Sec. 94, Ch. 197, L. 1967; R.C.M. 1947, 69-4517.

50-2-123. Compliance order authorized. If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(1).

50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $50.

(2) Except as provided in subsection (1) of this section and 50-2-123, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines shall be paid to the county treasurer of the county in which the violation occurs.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(2) thru (4).

CHAPTER 3

FIRE MARSHAL BUREAU

Part 1 — General Provisions

Section
50-3-101. Definitions.
50-3-102. Powers and duties of state fire marshal.
50-3-103. Rules promulgated by state fire marshal.
50-3-104. Fire marshal not to engage in other business.
50-3-105. Appointment of acting fire marshal.
50-3-106. Appointment of special deputy state fire marshals.
50-3-107. Appointment of assistants and clerical employees.
50-3-108. Oath of office required.
50-3-109. Tax on fire insurance premiums for maintenance of bureau.

Part 1

General Provisions

50-3-101. Definitions. In this chapter the following definitions apply:

(1) "Bureau" means the fire marshal bureau provided for in 2-15-2005.

(2) "Fire marshal" or "state fire marshal" means the state fire marshal provided for in 2-15-2005.

History: En. 50-3-101 by Code Commissioner, 1979.

50-3-102. Powers and duties of state fire marshal. (1) For the purpose of reducing the state's fire loss, the state fire marshal shall:

(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety;

(c) inspect public, business, or industrial buildings and require conformance to law and rules promulgated under the provisions of this chapter;

(d) assist local fire and law enforcement authorities in arson investigations and supervise such investigations when, in his judgment, supervision is necessary;

(e) review all training programs on investigation of accidental and incendiary fires;

(f) provide fire prevention and fire protection information to public officials and the general public;

(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;

(h) be the state entity primarily responsible for promoting fire safety at the state level and to represent the state in structural fire matters;

(i) encourage coordination of all services and agencies in structural fire matters to reduce duplication and fill voids in services;

(j) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices;

(k) keep in his office a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating thereto which have been determined by investigations under the provisions of chapter 63 of this title; and, except for statements of witnesses given during an investigation and information that may be held in confidence under 50-63-403, the record shall be open at all times to public inspection; and

(l) make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary.

(2) The state fire marshal may:

(a) adopt rules necessary for safeguarding life and property from the hazards of fire and explosion and carrying into effect the fire prevention laws of this state; and

(b) if necessary to safeguard life and property under rules promulgated pursuant to this section, maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

History: Ap. p. Sec. 1, Ch. 124, L. 1929; re-en. Sec. 2737.1, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; (1)(k), (1)(l)En. Secs. 19, 22, Ch. 148, L. 1911; re-en. Secs. 2756, 2759, R.C.M. 1921; re-en. Secs. 2756, 2759, R.C.M. 1935; amd. Secs. 36, 37, Ch. 187, L. 1977; Secs. 82-1226, 82-1229, R.C.M. 1947; R.C.M. 1947, 82-1202(1), (2), 82-1226, 82-1229; amd. Sec. 6, Ch. 145, L. 1979.

50-3-103. Rules promulgated by state fire marshal. (1) Rules promulgated by the state fire marshal by authority of 50-3-102 shall be reasonable and calculated to effect the purposes of this chapter. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibers; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of administration and filing with the secretary of state.

(3) Standards of the national fire protection association, United States bureau of standards, and American insurance association may be adopted in whole or in part by reference.

(4) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Any person violating any rule made under the provisions of this part shall be guilty of a misdemeanor.

History: Ap. p. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; Sec. 82-1202.1, R.C.M.; Ap. p. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; R.C.M. 1947, 82-1202(3), (4), 82-1202.1(1) thru (3), (5).

50-3-104. Fire marshal not to engage in other business. The state fire marshal shall not engage in any other business. He shall at all times be in the office of the state fire marshal ready for the performance of the duties required of him by law.

History: En. Sec. 4, Ch. 148, L. 1911; re-en. Sec. 2741, R.C.M. 1921; re-en. Sec. 2741, R.C.M. 1935; R.C.M. 1947, 82-1207.

50-3-105. Appointment of acting fire marshal. In an emergency or during the absence or disability of the state fire marshal, the attorney general may appoint an acting fire marshal who shall perform the duties of the office or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(1).

50-3-106. Appointment of special deputy state fire marshals. (1) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties.

(2) When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed $56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(2); amd. Sec. 1, Ch. 121, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 121, L. 1979, provided: "This act is effective on passage and approval." Approved March 19, 1979.

50-3-107. Appointment of assistants and clerical employees. The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(3).

50-3-108. Oath of office required. The state fire marshal shall file the oath of office required of all public officers. Any special deputy fire marshal appointed under the provisions of this chapter shall also file the oath of office required of all public officers.

History: En. Sec. 23, Ch. 148, L. 1911; re-en. Sec. 2760, R.C.M. 1921; re-en. Sec. 2760, R.C.M. 1935; amd. Sec. 42, Ch. 177, L. 1965; R.C.M. 1947, 82-1230.

50-3-109. Tax on fire insurance premiums for maintenance of bureau. Each insurer authorized to effect insurance on risks enumerated in 19-11-512 doing business in this state shall pay to the state auditor and commissioner of insurance ex officio during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of ¾ of 1% on the fire portion of the direct premiums on such risks received during the calendar year next preceding after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R.C.M. 1921; re-en. Sec. 2761, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 110, L. 1971; R.C.M. 1947, 82-1231.

CHAPTER 4

RESERVED

CHAPTER 5

HOSPITALS AND RELATED FACILITIES

Part 1 — General Provisions

Section
50-5-101. Definitions.
50-5-102. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-103. Rules and standards.
50-5-104. Certain exemptions for spiritual healing institution.
50-5-105. Discrimination prohibited.
50-5-106. Records and reports required of health care facilities — confidentiality.
50-5-107. Unlawful use of word nursing.
50-5-108. Injunction.
50-5-109. Penalty.

Part 2 — Licensing

50-5-201. License requirements.
50-5-202. License fees.
50-5-203. Application for license.
50-5-204. Issuance and renewal of licenses.
50-5-205. Repealed. Sec. 27, Ch. 347, L. 1979.
50-5-206. Repealed. Sec. 27, Ch. 347, L.1979.
50-5-207. Denial, suspension, or revocation of health care facility license — provisional license.
50-5-208. Hearing required.
50-5-209. Repealed. Sec. 27, Ch. 347, L. 1979.
Sections 50-5-210 through 50-5-220 reserved.
50-5-221. Civil penalty — injunction.

Part 3 — Construction, Expansion, or Alteration

50-5-301. When application is required.
50-5-302. Application and review process.
50-5-303. Repealed. Sec. 27, Ch. 347, L. 1979.
50-5-304. Review criteria, required findings, and standards.
50-5-305. Period of validity of approved application.
50-5-306. Right to hearing and appeal.
50-5-307. Civil penalty — injunction.
50-5-308. Special circumstances.

Part 4 — State Plan—Federal Aid

50-5-401. Repealed. Sec. 27, Ch. 347, L. 1979.
50-5-402. Administration of state medical facility plan.
50-5-403. State plan.
50-5-404. Duties of department.
50-5-405. Contracts with federal agencies.
50-5-406. Federal funds.
50-5-407. Publicity as to plans and hearing.
50-5-408. Applications for construction projects.
50-5-409. Hearing on denial of application.
50-5-410. Forwarding of application.
50-5-411. Consolidated applications.
50-5-412. Repealed. Sec. 27, Ch. 347, L. 1979.

Part 5 — Right to Refuse Participation in Sterilization

50-5-501. Definitions.
50-5-502. Refusal by hospital or health care facility to participate in sterilization.
50-5-503. Refusal by individual to participate in sterilization.
50-5-504. Unlawful to interfere with right of refusal.
50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits.

Part 1

General Provisions

50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(2) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(6) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(7) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(8) "Federal acts" means federal statutes for the construction of health care facilities.

(9) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(10) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(11) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(12) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(13) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term

includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(14) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(15) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(16) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(17) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(18) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(19) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(20) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(21) "Offer" means the holding out by a health care facility that it can provide specific health services.

(22) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(23) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(24) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(25) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(26) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(27) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(28) "State plan" means the state medical facility plan provided for in part 4.

History: **(1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2) thru (18)En. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977; R.C.M. 1947, 69-4102(1), 69-5201; amd. Sec. 1, Ch. 347, L. 1979.**

Compiler's Comments

Severability. Sec. 25, Ch. 347, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

50-5-102. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-103. Rules and standards. (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 through 4.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption.

History: **En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973; amd. Sec. 74, Ch. 349, L. 1974; R.C.M. 1947, 69-5213; amd. Sec. 2, Ch. 347, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 347, L. 1979, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the

Department of Health and Environmental Sciences. This bill is intended to expand the authority of the Department of Health and Environmental Sciences to license health care facilities in order to cover additional health care facilities, and to revise the requirements of specific health care facilities to obtain a certificate of need. Generally the Department of Health and Environmental Sciences is intended to have the authority to amend and update existing licensure rules and to adopt new rules for licensure to conform with the mandates of P.L. 92-603 and the Social Security Act, titles V, XVIII, and XIX.

In the same spirit, the Department may write and adopt rules, in accordance with the Montana Administrative Procedure Act, to insure the implementation of a state certificate of need program which meets the minimum standards of P.L. 93-641, the National Health Planning and Resources Development Act, and which is acceptable to the Secretary of the Department of Health, Education and Welfare. This program is aimed at insuring that only new institutional health services, expenditures in excess of $150,000 made to prepare for a new institutional health service, or arrangements and commitments made to finance a new institutional health service which are found by the Department of Health and Environmental Sciences to be needed may be granted a certificate of need and that only those services which are granted a certificate of need may be offered to the public.

Section 2 is the primary, broad-based source of rulemaking authority for the entire chapter. Insofar as licensing and certification of health care facilities are concerned, Title 50, chapter 5, part 2, this section does not add any new discretionary authority beyond that already authorized for the Department, with the exception that this section is intended to allow the setting of certification standards for additional types of health care facilities, such as health maintenance organizations and adult day care centers not currently covered by law. This section is not intended to expand the existing rulemaking authority under part 4 except for rules specific to the additional health care facilities that will be covered.

Section 2 is intended to clearly authorize rulemaking authority to implement part 3. As a minimum, it is intended that the Department may adopt rules covering the following:

1. procedures and assurances required by 42 CFR 123.401 through 42 CFR 123.411 and any subsequent rules replacing or augmenting them;
2. procedures to be followed during the review process, including any interrelationships with review being conducted by a health systems agency; and
3. the effect on an application for certificate of need if the Department fails to decide whether to approve or disapprove the application within the time period set for review.

Section 5 is intended to allow the Department to require health care facilities to keep records and file reports with the Department containing information relevant to licensing, certification, statewide health planning, and resources development.

Section 9 is not intended to be construed to add new rulemaking authority beyond what is currently authorized for the Department. The rules referred to in the section refer to federal rules implementing the federal statute cited in this section.

Section 10 is intended to retain existing authority to set a licensing standards except that these standards may be set for the new types of health care facilities added by this bill.

Section 13 is intended to authorize the Department to prescribe by rule the form of letters of intent and applications for certificate of need and to specify what information should be provided in each. This is further specific authority for rules governing a portion of the review process. The procedure for the entire review process is intended to be detailed under the authority delegated by Section 2.

Section 14 is explicit as to what review criteria, required findings, and standards must be included in Department rules adopted to implement the act; however, the Department may, within the scope of this section, adopt rules to more clearly define the criteria enumerated in this section.

Section 15 allows the Department to establish by rule what will constitute 'good cause' to extend the period for which a certificate of need is valid.

Section 16 is intended to permit the Department to define what will constitute "good cause" to grant a reconsideration hearing, in order to prevent hearings based on frivolous grounds and to contain administrative costs. This section is also intended to authorize additional specific procedures for administrative hearings, at both the Department and Board levels, than are provided in the Montana Administrative Procedure Act but which are consistent with the provisions of MAPA.

Section 20 is intended to apply specifically to Title 50, chapter 5, part 4, and does not broaden existing rulemaking authority except where it applies to the new types of health care facilities added by this bill."

50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in 50-5-103(2) apply.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(2); amd. Sec. 3, Ch. 347, L. 1979.

50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(1); amd. Sec. 4, Ch. 347, L. 1979.

50-5-106. Records and reports required of health care facilities — confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, shall be accessible to the public.

History: En. Sec. 176, Ch. 197, L. 1967; R.C.M. 1947, 69-5218; amd. Sec. 5, Ch. 347, L. 1979.

50-5-107. Unlawful use of word nursing. It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

History: En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973; R.C.M. 1947, 69-5203.1.

50-5-108. Injunction. The department, on advice of the attorney general, may bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter.

History: En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974; R.C.M. 1947, 69-5220; amd. Sec. 6, Ch. 347, L. 1979.

50-5-109. Penalty. A person who violates provisions of parts 1 or 4 is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense.

History: **En. Sec. 179, Ch. 197, L. 1967; R.C.M. 1947, 69-5221; amd. Sec. 7, Ch. 347, L. 1979.**

Part 2

Licensing

50-5-201. License requirements. (1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses shall be for 1 year unless issued for a shorter period. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses shall be displayed in a conspicuous place near the admitting office of the facility.

History: **En. Sec. 161, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5203; amd. Sec. 2, Ch. 37, L. 1979; amd. Sec. 8, Ch. 347, L. 1979.**

50-5-202. License fees. The department shall collect fees for each license issued for deposit in the state general fund as follows:

(1) facilities with 20 beds or less—$20;

(2) facilities with 21 beds or more—$1 per bed.

History: **En. Sec. 162, Ch. 197, L. 1967; amd. Sec. 1, Ch. 282, L. 1975; R.C.M. 1947, 69-5204.**

50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and annually thereafter, application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

History: **En. Sec. 163, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 2, Ch. 282, L. 1975; R.C.M. 1947, 69-5205.**

50-5-204. Issuance and renewal of licenses. (1) On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(2) Licensed premises shall be open to inspection, and access to all records shall be granted at all reasonable times.

History: En. Sec. 164, Ch. 197, L. 1967; R.C.M. 1947, 69-5206; amd. Sec. 9, Ch. 347, L. 1979.

50-5-205. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-206. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum standards are not being met.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

History: En. Sec. 167, Ch. 197, L. 1967; R.C.M. 1947, 69-5209; amd. Sec. 10, Ch. 347, L. 1979.

50-5-208. Hearing required. (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the board.

(2) Notice shall be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the board.

(3) The decision of the board is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to

appeal the decision. An appeal shall be in the district court where the facility is located or will be located.

History: **En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974; R.C.M. 1947, 69-5210.**

50-5-209. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-210 through 50-5-220 reserved.

50-5-221. Civil penalty — injunction. (1) A person who violates the terms of this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of this part, in addition to or exclusive of the remedy in subsection (1).

History: **En. Sec. 11, Ch. 347, L. 1979.**

Compiler's Comments

Codification. Sec. 26, Ch. 347, L. 1979, provided: "It is intended that section 11 of this act be codified as an integral part of Title 50, chapter 5, part 2; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 11 of this act."

Part 3

Construction, Expansion, or Alteration

50-5-301. When application is required. Unless an application has been submitted to and a certificate of need granted by the department, no person may initiate any of the following:

(1) a new institutional health service as defined in 50-5-101;

(2) any expenditure by or on behalf of a health care facility in excess of $150,000 made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures made in the preparation for the offering of a new institutional health service shall include expenditures for architectural designs, preliminary plans, working drawings, specifications, studies, and surveys.

History: **En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(1); amd. Sec. 3, Ch. 37, L. 1979; amd. Sec. 12, Ch. 347, L. 1979.**

50-5-302. Application and review process. (1) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt, the department shall send the applicant a form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.

(2) Within 15 calendar days after receipt of the application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304. If the application is found incomplete, the department shall request additional information.

(3) After the application has been designated complete, notification must be sent to the applicant and all other affected persons regarding the department's projected review of the application and the review period time schedule. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant. During the review period a public hearing may be held if requested by one or more affected persons.

(4) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject the application. The department shall notify the applicant and affected persons of its decision.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 13, Ch. 347, L. 1979.

50-5-303. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-304. Review criteria, required findings, and standards. The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

(2) the relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services;

(3) the need that the population served or to be served by the services has for the services;

(4) the availability of less costly quality equivalent or more effective alternative methods of providing such services;

(5) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(6) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(7) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

(10) the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(11) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(12) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

(13) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(14) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(3), (4); amd. Sec. 14, Ch. 347, L. 1979.

Compiler's Comments

Saving clause. Sec. 24, Ch. 347, L. 1979, provided: "This act does not affect certificate of need applications received and declared complete or granted by the department before the effective date of this act."

50-5-305. Period of validity of approved application. A certificate of need shall terminate 1 year after the date of issuance unless:

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

(2) the certificate of need validity period is extended by the department for one additional period of 6 months, upon showing good cause by the applicant for the extension.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(5); amd. Sec. 15, Ch. 347, L. 1979.

50-5-306. Right to hearing and appeal. (1) The applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may request and shall be granted a public hearing before the department to reconsider its decision, if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.

(2) An aggrieved applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The scope of the hearing before the board is limited to a review of the record upon which the department made its decision. The board, upon request of any party to an appeal before the board, shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704.

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater detail the hearing and appellate procedures.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(6); amd. Sec. 16, Ch. 347, L. 1979.

50-5-307. Civil penalty — injunction. (1) A person who violates the terms of 50-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 17, Ch. 347, L. 1979.

50-5-308. Special circumstances. In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof.

History: En. Sec. 18, Ch. 347, L. 1979.

Compiler's Comments

Codification. Sec. 26, Ch. 347, L. 1979, provided: "It is intended that section 18 of this act be codified as an integral part of Title 50, chapter 5, part 3; and the provisions contained in Title 50, chapter 5, parts 1 through 4, apply to section 18 of this act."

Part 4

State Plan — Federal Aid

50-5-401. Repealed. Sec. 27, Ch. 347, L. 1979.

50-5-402. Administration of state medical facility plan. The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a health care facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. This plan is to be known as the state medical facility plan.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 19, Ch. 347, L. 1979.

50-5-403. State plan. The state plan shall specify relative need for the projects included in the construction program in accordance with regulations prescribed under federal acts and provide for the construction, maintenance, and operation in the order of relative need determined by the department.

History: En. Sec. 187, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5308.

50-5-404. Duties of department. The department shall:

(1) prescribe minimum standards for the maintenance and operation of health care facilities receiving federal aid for construction under the state plan;

(2) inventory existing hospital, medical, and related health care facilities;

(3) survey the need for construction or alteration of health care facilities;

(4) develop and administer a state plan for the construction and alteration of public and other nonprofit health care facilities;

(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

(6) accept and deposit with the state treasurer and spend any grant made to meet costs of carrying out this part;

(7) prepare and review a construction program in accordance with federal requirements that will provide adequate health care facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably available to all persons;

(8) submit to federal agencies state plans, including those for the health care facilities construction program and modifications of it providing for the establishment and operation of health care facilities construction activities in accordance with federal requirements;

(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state and make the plan available upon request to all persons or organizations;

(11) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

(12) require reports and make inspections and investigations as necessary or required by the federal agency;

(13) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties.

History: En. Secs. 182, 183, 184, 186, Ch. 197, L. 1967; amd. Secs. 78, 79, 80, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5303, 69-5304, 69-5305(part), 69-5307; amd. Sec. 20, Ch. 347, L. 1979.

50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate health care facilities and services.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 21, Ch. 347, L. 1979.

50-5-406. Federal funds. (1) The department may accept federal funds.

(2) All federal funds received shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government.

(3) The department shall transmit federal funds to applicants for work performed or purchases made in carrying out approved projects. Claims for all payments shall be approved by the department.

History: En. Secs. 184, 190, Ch. 197, L. 1967; amd. Secs. 79, 107, 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5305(part), 69-5311.

50-5-407. Publicity as to plans and hearing. Before submitting plans to a federal agency, the department shall give adequate publicity including a general description of the plans and may hold a public hearing at which all persons or organizations may express their views.

History: En. Sec. 185, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5306.

50-5-408. Applications for construction projects. Applications for health care facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a health care facility.

History: En. Sec. 188, Ch. 197, L. 1967; R.C.M. 1947, 69-5309; amd. Sec. 22, Ch. 347, L. 1979.

50-5-409. Hearing on denial of application. If an application is denied, the applicant shall have an opportunity for a fair hearing.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-410. Forwarding of application. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that an application complies with state and federal requirements and conforms to the state plan, the department shall forward the application to the appropriate federal agency.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single health care facility or health center serving each of the counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate health care facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of establishing a health care facility, health care facility construction, issuance of bonds, or method of operation and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan.

History: En. Sec. 191, Ch. 197, L. 1967; R.C.M. 1947, 69-5312; amd. Sec. 23, Ch. 347, L. 1979.

50-5-412. Repealed. Sec. 27, Ch. 347, L. 1979.

Part 5

Right to Refuse Participation in Sterilization

50-5-501. Definitions. As used in this part:

(1) "sterilization" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to eliminate an individual's reproductive capacity;

(2) "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 69-5222 by Sec. 1, Ch. 247, L. 1974; R.C.M. 1947, 69-5222.

50-5-502. Refusal by hospital or health care facility to particpate in sterilization. (1) No private hospital or health care facility shall be required, contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such hospital or facility as stated by its governing body or board, to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose.

(2) Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(1).

50-5-503. Refusal by individual to participate in sterilization. (1) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions.

(2) If requested by any hospital or health care facility or person desiring sterilization, such refusal shall be in writing signed by the person refusing but may refer generally to the grounds of "religious beliefs and moral convictions".

(3) The refusal of any person to advise concerning, perform, assist, or participate in sterilization shall not be a consideration in respect of staff

privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(2).

50-5-504. Unlawful to interfere with right of refusal. (1) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this part, whether by duress, coercion, or any other means.

(2) The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(3).

50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits. Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(4).

CHAPTER 6

EMERGENCY MEDICAL SERVICES

Part 1 — Development of Program

Section

50-6-101. Legislative purpose.
50-6-102. Department to establish and administer program.
50-6-103. Powers of department.
50-6-104. Interdepartmental cooperation required.

Part 2 — Emergency Medical Technicians

50-6-201. Legislative findings.
50-6-202. Definitions.
50-6-203. Rules.
50-6-204. Emergency medical technician — basic.
50-6-205. Emergency medical technician — advanced.
50-6-206. Consent.
50-6-207. Construction.

Part 3 — Ambulance Service Licensing

50-6-301. Findings and purposes.
50-6-302. Definitions.
50-6-303. Rules.
50-6-304. Cooperative agreements.
50-6-305. Minimum equipment requirements.
50-6-306. License required.
50-6-307. License fee.
50-6-308. Cancellation of license.
50-6-309. Submission of plan of correction as bar to cancellation.
50-6-310. Notice and hearing required.
50-6-311. Return of license for destruction or deletion.

50-6-312. Hardship exception authorized.
50-6-313. Inspections.
50-6-314. Authority of board to compel and take testimony.
50-6-315. County attorney to prosecute violations.
50-6-316. Penalty.

Part 1

Development of Program

50-6-101. Legislative purpose. The public welfare requires the providing of assistance and encouragement for the development of a comprehensive emergency medical services program for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who die unnecessarily because necessary life-support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated. The development of an emergency medical services program is in the interest of the social well-being and health and safety of the state and all its people.

History: **En. 69-7001 by Sec. 1, Ch. 311, L. 1974; R.C.M. 1947, 69-7001.**

50-6-102. Department to establish and administer program. The department of health and environmental sciences shall establish and administer an emergency medical services program.

History: **En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).**

50-6-103. Powers of department. (1) The department of health and environmental sciences is authorized to confer and cooperate with any and all other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, or appropriated to the department.

History: **En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).**

50-6-104. Interdepartmental cooperation required. The department of health and environmental sciences, the department of community affairs, highway safety division, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis.

History: **En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).**

Part 2

Emergency Medical Technicians

50-6-201. Legislative findings. The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

History: **En. 69-7003 by Sec. 1, Ch. 84, L. 1975; R.C.M. 1947, 69-7003.**

50-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Emergency medical technician—basic" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in emergency care in a training program approved by the state board of medical examiners and certified by said board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

(2) "Emergency medical technician—advanced" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in an advanced emergency medical technician training program approved by the state board of medical examiners and certified by the board as having demonstrated an advanced level of competence suitable to treat victims of severe injury or other serious emergent condition.

(3) "Board" means the board of medical examiners, department of professional and occupational licensing.

History: **En. 69-7004 by Sec. 2, Ch. 84, L. 1975; R.C.M. 1947, 69-7004.**

50-6-203. Rules. The board, after consultation with the department of health and environmental sciences, the department of community affairs, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of personnel, administration of drugs, and other acts as allowed herein.

History: **En. 69-7008 by Sec. 6, Ch. 84, L. 1975; R.C.M. 1947, 69-7008.**

50-6-204. Emergency medical technician — basic. An emergency medical technician—basic may perform any of the following:

(1) render emergency care, rescue, and resuscitation services;

(2) provide emergency transportation;

(3) perform cardiopulmonary resuscitation in the pulseless, nonbreathing patient; and

(4) such other acts as the board may allow by rule.

History: **En. 69-7005 by Sec. 3, Ch. 84, L. 1975; R.C.M. 1947, 69-7005.**

50-6-205. Emergency medical technician — advanced. (1) An emergency medical technician—advanced may perform any of the following:

(a) render emergency care, rescue, and resuscitation services;

(b) while caring for patients during training at a hospital, ambulance, or other medical facility, administer parenteral medications under the direct supervision of a physician or a registered nurse;

(c) perform cardiopulmonary resuscitation and defibrillation in a pulseless, nonbreathing patient; and

(d) such other acts as the board may allow by rule.

(2) When an emergency medical technician—advanced has voice contact with a physician and upon the physician's order or is functioning under formally adopted written standing orders of a local hospital medical staff, the following acts may be performed based upon such direct or indirect order:

(a) administer intravenous saline or glucose solutions;

(b) perform gastric or tracheal suction by intubation;

(c) administer parenteral injections of drugs approved by the board; and

(d) such other acts as the board may allow by rule.

History: En. 69-7006, 69-7007 by Secs. 4, 5, Ch. 84, L. 1975; R.C.M. 1947, 69-7006, 69-7007.

50-6-206. Consent. No emergency medical technician may be subject to civil liability for failure to obtain consent in performing acts as authorized herein to any individual regardless of age where the patient is unable to give consent and there is no other person present legally authorized to consent, provided that such acts are in good faith and without knowledge of facts negating consent.

History: En. 69-7009 by Sec. 7, Ch. 84, L. 1975; R.C.M. 1947, 69-7009.

50-6-207. Construction. Nothing in this part shall be construed to detract from the powers granted to the department of health and environmental sciences to regulate ambulance service as provided for in part 3 of this chapter.

History: En. 69-7010 by Sec. 8, Ch. 84, L. 1975; R.C.M. 1947, 69-7010.

Part 3

Ambulance Service Licensing

50-6-301. Findings and purposes. The public welfare requires the establishment of minimum uniform standards for the operation of ambulance services, as defined in 50-6-302, and the control, inspection, and regulation of persons engaged therein in order to prevent or eliminate improper care that may endanger the health of the public. The regulation of establishments providing such service is in the interest of social well-being and the health and safety of the state and all its people.

History: En. Sec. 1, Ch. 387, L. 1971; R.C.M. 1947, 69-3604.

50-6-302. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this part, but does not include a motor vehicle owned by or operated under the direct control of the United States or this state.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(7) "Driver" means an individual who drives an ambulance.

(8) "Dual purpose police patrol car" means a vehicle operated by a police department which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or this state.

History: En. Sec. 2, Ch. 387, L. 1971; amd. Sec. 11, Ch. 349, L. 1974; amd. Sec. 1, Ch. 86, L. 1977; R.C.M. 1947, 69-3605.

50-6-303. Rules. (1) The department shall prescribe and enforce rules which are necessary to carry out the provisions of this part.

(2) These rules shall relate to ambulance equipment, training, operations (records), personnel, cleanliness, and insurance.

(3) No rules shall be effective until a public hearing has been held for review of the rules.

(4) Notice of the public hearing shall be sent by ordinary mail at least 30 days before the hearing to all Montana licensed operators along with a copy of the proposed rules.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(1), (2).

50-6-304. Cooperative agreements. The department may enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this part or any part thereof.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(3).

50-6-305. Minimum equipment requirements. (1) Pursuant to the provisions of this part, required equipment in an ambulance which is maintained and regularly used for the transportation of patients shall consist of the minimal equipment for ambulances as adopted by the American college of surgeons, March, 1967, and required training shall be set at a level of advanced American red cross first aid or its equivalent.

(2) Nothing in this section shall preclude the use of any vehicle for the transportation of the injured in instances of emergency, need, or disaster situations, and the department shall not prescribe and enforce any rules

related to ambulance equipment and training which exceed these requirements.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(4).

50-6-306. License required. (1) Every person conducting or operating an ambulance service shall procure a license issued by the department. A separate license shall be required for each establishment.

(2) Applications for a license shall be made in writing to the department on forms specified by the department.

(3) Licenses shall be granted as a matter of right unless conditions exist as specified by this part which are grounds for a cancellation or denial of a license.

(4) The applicant may apply for a hearing and judicial review as specified by this part upon being denied a license or upon cancellation.

(5) Each license shall expire on December 31 following its date of issue unless canceled for cause. Renewal may be obtained by paying the required annual license fee.

(6) The license shall not be transferable or be applicable to any premises other than that for which originally issued.

History: En. Secs. 3, 4, Ch. 387, L. 1971; R.C.M. 1947, 69-3606, 69-3607(2).

50-6-307. License fee. (1) There shall be paid to the department, with each application for a license or for renewal of a license, an annual license fee of $5.

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part.

History: En. Secs. 4, 10, Ch. 387, L. 1971; R.C.M. 1947, 69-3607(1), 69-3613.

50-6-308. Cancellation of license. The department may cancel a license if it finds that the licensee has violated provisions of or rules adopted under this part and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-309. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department is a bar to prosecution for violation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-310. Notice and hearing required. (1) The department may not deny or cancel a license without:

(a) delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled.

(2) The licensee shall make written request to the board for a hearing within 10 days after notice of the grounds or charges has been received.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).**

50-6-311. Return of license for destruction or deletion. On cancellation of a license, the license certificate shall be returned to the department for destruction or deletion as the department may direct in its notice of cancellation.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(3).**

50-6-312. Hardship exception authorized. (1) If the board finds that the violations of this part do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed 1 year, during which time a license may not be denied the licensee nor may his license be canceled.

(2) Subsequent exceptions may be granted the licensee, each for a period not to exceed 1 year and each after a hearing before the board.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).**

50-6-313. Inspections. (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections which the department may consider necessary.

(3) The department has free access at all reasonable hours to the establishments listed and defined in 50-6-302 to make inspections.

History: **En. Sec. 7, Ch. 387, L. 1971; amd. Sec. 13, Ch. 349, L. 1974; R.C.M. 1947, 69-3610.**

50-6-314. Authority of board to compel and take testimony. In any proceeding under this part, the board may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state.

History: **En. Sec. 8, Ch. 387, L. 1971; R.C.M. 1947, 69-3611.**

50-6-315. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or the rules adopted under this part.

History: **En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(4).**

50-6-316. Penalty. Any person violating any provision of this part or regulation made hereunder shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense, not less than $75 or more than $200 for the second offense, and for third and subsequent offenses, not less than $200 or more than $500 or imprisoned in the county jail not to exceed 90 days.

History: **En. Sec. 9, Ch. 387, L. 1971; R.C.M. 1947, 69-3612.**

CHAPTER 7

HOME HEALTH AGENCIES
(Sections 50-7-101 through 50-7-309 repealed.
Sec. 27, Ch. 347, L. 1979)

CHAPTERS 8 THROUGH 14

RESERVED

CHAPTER 15

VITAL STATISTICS

Part 1 — General Provisions

Section
50-15-101. Definitions.
50-15-102. Statewide system of vital statistics to be established.
50-15-103. Duties of department.
50-15-104. Appointment and supervision of local registrars.
50-15-105. Appointment of deputies authorized.
50-15-106. Registrars and deputies to report violations.
50-15-107. Payment of fees to local registrars.
50-15-108. Duty to furnish information.
50-15-109. Certificates.
50-15-110. Certified copy of certificate.
50-15-111. Certified copy fee.
50-15-112. Inspection of records and issuance of copies limited.
50-15-113. Disclosure of information to governmental agencies.
50-15-114. Unlawful acts and penalties.

Part 2 — Birth

50-15-201. Birth certificate to be filed.
50-15-202. Unattended birth.
50-15-203. Child of unknown parentage.
50-15-204. Delayed or amended birth certificate.
50-15-205. Establishment of date and place of birth when certificate cannot be obtained.
50-15-206. Permissible disclosure of illegitimate birth.
50-15-207. New birth certificate upon proof of legitimation.

Part 3 — Marriage and Adoption

50-15-301. Marriage certificates.
50-15-302. Decree of dissolution or declaration of invalidity of marriage.
50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption.
50-15-304. Substitute birth certificate for person adopted.

Part 4 — Death

50-15-401. Death certificate to be filed.
50-15-402. Copy to be forwarded to deceased's county of residence.
50-15-403. Preparation of certificate when death medically attended.
50-15-404. Preparation of certificate when death not medically attended.
50-15-405. Permit for disposition of body.

50-15-406. Body brought into state for disposition.
50-15-407. Disinterment permit.

Part 1

General Provisions

50-15-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(4) "Fetal death" means a birth after 20 weeks of gestation which is not a live birth.

(5) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(6) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(7) "Person in charge of interment" means a person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body.

(8) "Physician" means a person legally authorized to practice medicine in this state.

(9) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data.

History: En. Secs. 2, 41, Ch. 197, L. 1967; amd. Secs. 28, 48, Ch. 349, L. 1974; R.C.M. 1947, 69-4102(1), (2), 69-4401.

50-15-102. Statewide system of vital statistics to be established. The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, and preserving vital statistics.

History: En. Sec. 42, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4402.

50-15-103. Duties of department. The department shall:

(1) divide the state into registration districts and change districts as necessary;

(2) gather, record, use, and preserve vital statistics;

(3) enforce rules adopted by the department for gathering, recording, using, and preserving vital statistics;

(4) give instructions and prescribe forms for gathering, recording, preserving, and using vital statistics.

History: En. Sec. 43, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4403.

50-15-104. Appointment and supervision of local registrars. The department shall:

(1) appoint local registrars;

(2) supervise local registrars and other persons required to comply with this chapter.

History: En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974; R.C.M. 1947, 69-4409.

50-15-105. Appointment of deputies authorized. With approval of the department, local registrars may appoint deputies.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-106. Registrars and deputies to report violations. Local registrars and deputies shall immediately report violations of this chapter or rules of the department to the department.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-107. Payment of fees to local registrars. (1) The department may specify by regulation a fee to be paid each local registrar for each complete birth, death, or fetal death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from his county with the names of the local registrars and the amount due each.

(3) The treasurer shall pay each local registrar out of the county general fund.

History: En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431.

50-15-108. Duty to furnish information. (1) Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, or divorce upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: (1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435.

50-15-109. Certificates. (1) All certificates shall include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and retain a triplicate copy.

(3) Local registrars shall not issue certified copies of certificates.

(4) Certificates filed within 6 months after the time prescribed by the department shall be prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not

the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to his interests, his heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412.

50-15-110. Certified copy of certificate. Subject to the limitations of 50-15-112, 50-15-113, 50-15-114, subsections (3) and (4) of 50-15-204, and 50-15-206, the department shall furnish to any applicant a certified copy of a certificate or part of it upon request which shall be considered the same as the original.

History: En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

50-15-111. Certified copy fee. (1) The department shall prescribe a fee of not less than $2 for a certified copy of certificates or search of files.

(2) Fees received for a certified copy of a certificate or a search of files shall be deposited in the state general fund.

History: (1)En. Sec. 47, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4407, R.C.M. 1947; (2)En. Sec. 48, Ch. 197, L. 1967; Sec. 69-4408, R.C.M. 1947; R.C.M. 1947, 69-4407(part), 69-4408.

50-15-112. Inspection of records and issuance of copies limited. (1) The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to the interests of the persons described in 50-15-206 for the purposes of custody actions, social security eligibility determinations, or Indian tribal enrollment determinations.

History: En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; R.C.M. 1947, 69-4404(part); amd. Sec. 1, Ch. 178, L. 1979.

50-15-113. Disclosure of information to governmental agencies. (1) The board may direct the department to disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the board.

(2) If no identification of individuals is made, the board may permit the use of data contained in vital statistics records for research purposes.

(3) The department may provide transcripts to the federal agency responsible for vital statistics if it is reimbursed for costs.

History: En. Secs. 45, 47, Ch. 197, L. 1967; amd. Secs. 50, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4405, 69-4407(part).

50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the department.

(2) A person shall be fined not more than $1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than $100, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

History: (1)En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; Sec. 69-4404, R.C.M. 1947; (2)En. Sec. 76, Ch. 197, L. 1967; Sec. 69-4436, R.C.M. 1947; (3)En. Sec. 77, Ch. 197, L. 1967; Sec. 69-4437, R.C.M. 1947; R.C.M. 1947, 69-4404(part), 69-4436, 69-4437.

Part 2

Birth

50-15-201. Birth certificate to be filed. Within the time prescribed by the department, a birth certificate shall be filed with the local registrar of the district in which the birth occurred by:

(1) the physician, midwife, or other legally authorized person if the birth is attended;

(2) one of the parents if the birth is unattended.

History: En. Sec. 53, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4413.

50-15-202. Unattended birth. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered".

History: En. Sec. 54, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4414.

50-15-203. Child of unknown parentage. (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate.

(2) The report shall contain:

(a) the date and place of finding or assumption of custody;

(b) sex, color or race, and approximate age of the child;

(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(3) The place where the child was found or custody assumed shall be the place of birth.

(4) The date of birth shall be determined by approximation.

(5) If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

History: En. Sec. 55, Ch. 197, L. 1967; R.C.M. 1947, 69-4415.

50-15-204. Delayed or amended birth certificate. (1) After the time prescribed by the department, a person born in this state may file a birth certificate upon submitting proof as required by the department or by any court.

(2) A person may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) If birth certificates are accepted 6 months or more after the time prescribed for filing or are altered by the department after filing, the certificate shall show the date of the delayed filing or alteration and the mark "delayed" or "altered". A summary statement of the evidence in support of the delayed filing or alteration shall be endorsed on the certificate.

(4) The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

History: (1), (2)En. Sec. 56, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4416, R.C.M. 1947; (3)En. Sec. 57, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4417, R.C.M. 1947; (4)En. Sec. 59, Ch. 197, L. 1967; Sec. 69-4419, R.C.M. 1947; R.C.M. 1947, 69-4416, 69-4417, 69-4419.

50-15-205. Establishment of date and place of birth when certificate cannot be obtained. If a person born in this state cannot obtain a birth certificate from the department, the judicial procedure to establish date and place of birth is as follows:

(1) The person petitions the district court for an order establishing a public record of his birth alleging the facts which he claims entitle him to the birth certificate.

(2) If the court is satisfied of the truth of the allegations in the petition, it makes an order reciting the facts, determining the time and place of birth, names of parents, and other relevant facts.

(3) The court order or a certified copy is recorded with the county clerk and recorder and with the department.

(4) From the court order, the department makes a transcript of the important facts and issues a delayed birth certificate.

History: En. Sec. 58, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4418.

50-15-206. Permissible disclosure of illegitimate birth. (1) Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

(b) upon request of the department of social and rehabilitation services or a licensed adoption agency for purposes of custody action, social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose.

History: En. Sec. 62, Ch. 197, L. 1967; R.C.M. 1947, 69-4422; amd. Sec. 2, Ch. 178, L. 1979.

50-15-207. New birth certificate upon proof of legitimation. Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption.

History: En. Sec. 63, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4423.

Part 3

Marriage and Adoption

50-15-301. Marriage certificates. Before the 16th day of each month, each clerk of a district court shall report marriage certificates filed with him during the preceding calendar month to the department. Reports shall be on forms and contain information prescribed by the department. The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license.

History: En. Sec. 72, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4432.

50-15-302. Decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; and

(g) date of judgment and the party which was granted it.

History: En. Sec. 74, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4434; amd. Sec. 4, Ch. 37, L. 1979.

50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption. Before the 16th day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department.

History: En. Sec. 73, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4433; amd. Sec. 5, Ch. 37, L. 1979.

50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on demand of the adopted person if of legal age or on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder.

History: (1)En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977; Sec. 69-4420, R.C.M. 1947; (2), (3)En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974; Sec. 69-4421, R.C.M. 1947; R.C.M. 1947, 69-4420, 69-4421.

Part 4

Death

50-15-401. Death certificate to be filed. A death or fetal death certificate shall be filed with the local registrar prior to interment or other disposition of a dead body. If the place of death is known, the certificate shall be filed within 3 days after the occurrence is known. If the place of death or fetal death is unknown, the certificate shall be filed within 24 hours after the occurrence is known.

History: **En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(1).**

50-15-402. Copy to be forwarded to deceased's county of residence. If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

History: **En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(2).**

50-15-403. Preparation of certificate when death medically attended. A person in charge of interment shall:

(1) obtain personal data required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate;

(2) (a) present the death certificate to the physician last in attendance upon the deceased, the coroner having jurisdiction, or the state medical examiner, who shall certify the cause of death according to his best knowledge and belief; or

(b) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;

(3) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;

(4) file the death or fetal death certificate with the local registrar within 3 days after the occurrence.

History: **En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979.**

50-15-404. Preparation of certificate when death not medically attended. (1) If the death or fetal death occurred without medical attendance or the physician last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification.

History: **En. Sec. 66, Ch. 197, L. 1967; R.C.M. 1947, 66-4426; amd. Sec. 29, Ch. 7, L. 1979.**

50-15-405. Permit for disposition of body. (1) No dead body may be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar.

(2) No permit may be issued until a death certificate, fetal death certificate, or notice of delay as required in subsection (3) of this section has been filed with the local registrar.

(3) If the cause of death or fetal death cannot be determined within 3 days after the occurrence, the attending physician, coroner, or medical examiner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body.

History: **En. Secs. 67, 68, Ch. 197, L. 1967; R.C.M. 1947, 69-4427, 69-4428; amd. Sec. 30, Ch. 7, L. 1979.**

50-15-406. Body brought into state for disposition. If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

History: **En. Sec. 69, Ch. 197, L. 1967; R.C.M. 1947, 69-4429.**

50-15-407. Disinterment permit. (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

History: **En. Sec. 1, Ch. 481, L. 1973; amd. Sec. 19, Ch. 187, L. 1977; R.C.M. 1947, 69-4428.1.**

CHAPTER 16

HEALTH CARE INFORMATION

Part 1 — General Provisions

Section

50-16-101. Public officials and corporations to furnish information on request.
50-16-102. Information on infant morbidity and mortality.

Part 2 — In-Hospital Medical Staff Committees

50-16-201. Data defined.
50-16-202. Committees to have access to information.
50-16-203. Committee information and proceedings confidential and privileged.
50-16-204. Restrictions on use or publication of information.
50-16-205. Data confidential — inadmissible in judicial proceedings.

Part 3 — Confidentiality of Health Care Information

50-16-301. Purpose.
50-16-302. Definitions.
50-16-303. No limitation on licensing boards.
50-16-304. Reporting obligations not limited.
50-16-305. No disciplinary or punitive action for disclosing violation.
Sections 50-16-306 through 50-16-310 reserved.
50-16-311. When consent is required to release or transfer confidential health care information.
50-16-312. Disclosure by third party to physician of person affected.

50-16-313. Rights of person affected regarding modifications and additions.
50-16-314. Privileged information — exemption from compulsory legal process.

Part 1

General Provisions

50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of health and environmental sciences.

History: En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114.

50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of health and environmental sciences, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person furnishing information under subsection (1) of this section is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) of this section may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of persons whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or his legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115.

Part 2

In-Hospital Medical Staff Committees

50-16-201. Data defined. As used in this part, "data" means written reports, notes, or records of tissue committees or other medical staff committees in connection with the professional training, supervision, or discipline of the medical staff of hospitals.

History: En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304.

50-16-202. Committees to have access to information. It is in the interest of public health and patient medical care that in-hospital medical staff committees have access to the records, information, and other data relating to the condition and treatment of patients in such hospital to study and evaluate for the purpose of evaluating matters relating to the care and treatment of such patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out such purposes, any hospital, its agents and employees may provide medical records, information, or other data relating to the condition and treatment of any patient in said hospital to any in-hospital medical staff committee.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

50-16-203. Committee information and proceedings confidential and privileged. All such records, data, and information shall be confidential and privileged to said committee and the members thereof, as though such hospital patients were the patients of the members of such committee. All proceedings and in-hospital records and reports of such medical staff committees shall be confidential and privileged.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

50-16-204. Restrictions on use or publication of information. Such in-hospital medical staff committees shall use or publish information from such material only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither such in-hospital medical staff committee nor the members, agents, or employees thereof shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of such committee, but such in-hospital medical staff committee, its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and shall not disclose or reveal the name of any such in-hospital patient.

History: En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302.

50-16-205. Data confidential — inadmissible in judicial proceedings. All data shall be confidential and shall not be admissible in evidence in any judicial proceeding, but this section shall not affect the admissibility in evidence of records dealing with the patient's hospital care and treatment.

History: En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303.

Part 3

Confidentiality of Health Care Information

50-16-301. Purpose. The purpose of this part is to establish safeguards for maintaining the integrity of confidential health care information.

History: En. Sec. 1, Ch. 578, L. 1979.

50-16-302. Definitions. As used in this part, the following definitions apply:

(1) "Health care provider" means a person, corporation, facility, or institution licensed by this state to provide health care services.

(2) "Health care services" means diagnosis, treatment, medical evaluation, advice, or other activities permitted under the health care licensing statutes of this state.

(3) "Confidential health care information" means information obtained by a health care provider relating to health care history, diagnosis, condition, treatment, or evaluation.

(4) "Peer review committee" means a committee of a state or local professional medical society or of a medical staff of a licensed hospital or other health care facility that is operated pursuant to written bylaws approved by the governing board of the hospital or other health care facility or approved by an organization of health care providers and formed pursuant to state or federal law and authorized by law to evaluate health care services.

(5) "Third party" means a person or entity other than the person to whom the confidential health care information relates and other than a health care provider.

(6) "Qualified person" means a person whose training and experience is appropriate to the nature and level of work in which he is engaged and who, when working as part of an organization, is performing the work with published and adequate administrative safeguards against unauthorized disclosures.

(7) "Administration" includes but is not limited to accreditation, reimbursement, liability risk management, appraisal, and defense or prosecution of legal actions.

History: En. Sec. 2, Ch. 578, L. 1979.

50-16-303. No limitation on licensing boards. This part does not limit the authority, otherwise provided by law, of a licensing or disciplinary board of this state to require a peer review committee to report to it concerning any disciplinary actions or recommendations of the committee or to transfer to it records of the committee's proceedings or actions, including confidential information. This part does not limit the authority of such board to restrict or revoke a license to practice. However, personally identifiable portions of a person's confidential health care information may not be used in any legal action without the written consent of the person or his authorized representative, except upon court order.

History: En. Sec. 6, Ch. 578, L. 1979.

50-16-304. Reporting obligations not limited. This part may not be construed to limit the reporting obligations provided by Title 37, chapter 3, part 4, or any other statute which requires information to be reported to a government agency.

History: En. Sec. 8, Ch. 578, L. 1979.

50-16-305. No disciplinary or punitive action for disclosing violation. No disciplinary or punitive action may be taken against an employee or agent who brings evidence of violation of this part to the attention of a person or entity.

History: En. Sec. 7, Ch. 578, L. 1979.

50-16-306 through 50-16-310 reserved.

50-16-311. When consent is required to release or transfer confidential health care information. (1) Except as provided in subsection (2) or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, confidential health care information relating to a person may not be released or transferred without the written consent of the person or his authorized representative.

(2) Consent is not required for release or transfer of confidential health care information:

(a) to a physician, dentist, or other medical person for diagnosis or treatment of an individual in a medical or dental emergency;

(b) to a peer review committee if the information concerns matters within the scope of the licensed professional practice of the committee members;

(c) to qualified persons for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies. However, qualified persons may not directly or indirectly identify an individual patient in a research report, audit, or evaluation or disclose a patient's identity in any manner.

(d) to a health care provider:

(i) as may be reasonably necessary to provide health care services to the individual about whom the information relates; or

(ii) in the administration of the office, practice, or operation in connection with the providing of health care services to the individual about whom the information relates;

(e) to an employer as may be reasonably necessary in the administration of a group insurance plan or to a workers' compensation insurer, the division of workers' compensation, or the workers' compensation judge, as is necessary in the administration of Title 39, chapters 71 and 72;

(f) when a person's insurance coverage obligates more than one insurer with respect to a claim or benefit;

(g) to a state insurance department for the purpose of reviewing an insurance claim or complaint made to such department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured.

History: **En. Sec. 3, Ch. 578, L. 1979.**

50-16-312. Disclosure by third party to physician of person affected. (1) A third party who has performed an adverse action defined in subsection (2) may transfer confidential health care information to a designated physician when the third party receives a written request signed by the affected person or his authorized representative.

(2) The adverse action referred to in subsection (1) may include but is not limited to:

(a) denial of an application for an insurance policy;

(b) issuance of an insurance policy with other than standard and uniform restrictions;

(c) rejection in whole or in part of any claim for insurance benefits;

(d) denial of an employment application or termination of employment when such denial or termination is for health reasons.

(3) Prior to making a transfer, a third party may require payment of actual expenses incurred in the retrieval, duplication, and forwarding of such information.

(4) A physician receiving confidential health care information pursuant to subsection (1) may review and interpret the information. Thereafter, the physician may, in his discretion, disclose to the affected person as much of the transferred information as he believes is in the best interest of the affected person to know.

History: En. Sec. 4, Ch. 578, L. 1979.

50-16-313. Rights of person affected regarding modifications and additions. (1) After reviewing confidential health care information received pursuant to 50-16-312(4), an affected person or his authorized representative may request a third party to amend or expunge any part of the information that he believes is in error or request the addition of relevant information. Upon receiving such a request, the third party shall notify the health care provider who initially forwarded the information to the third party. If the health care provider concurs with the modification requested by the affected person, the third party shall modify the information in accordance with the request.

(2) Modification of confidential health care information may be required by court order upon action brought by the requestor.

(3) After reviewing confidential health care information received pursuant to 50-16-312(4), a person has the right to place into the confidential file a personal statement of reasonable length regarding the correctness or relevance of existing information or regarding the addition of new information. The statement or a copy thereof shall at all times accompany that part of the information to which it relates.

History: En. Sec. 4, Ch. 578, L. 1979.

50-16-314. Privileged information — exemption from compulsory legal process. (1) Except as provided in subsection (2), confidential health care information is not subject to compulsory legal process in any type of proceeding, including any pretrial or other preliminary proceedings, and a person or his authorized representative may refuse to disclose and may prevent a witness from disclosing confidential health care information in any proceeding.

(2) The exemption or privilege provided in subsection (1) does not apply:

(a) when the individual's physical or mental condition is relevant regarding the execution or witnessing of a will or other document;

(b) when the physical or mental condition of an individual is introduced by a party claiming or defending as a successor or beneficiary of the individual;

(c) when an individual makes communications to a psychiatrist in the course of a court-ordered psychiatric examination after having been informed that the communications are admissible only as to issues involving the individual's mental condition;

(d) when required by Rule 35, M.R.Civ.P., or otherwise ordered by a court.

History: En. Sec. 5, Ch. 578, L. 1979.

CHAPTER 17

TUBERCULOSIS CONTROL

Part 1 — General Provisions

Section

50-17-101. Policy of state.
50-17-102. Definitions.
50-17-103. Powers and duties of department.
50-17-104. Facilities for diagnosis and treatment of tuberculosis.
50-17-105. Application to require examination or treatment for tuberculosis.
50-17-106. Hearing on the application.
50-17-107. Adjudication of application.
50-17-108. Commitment to hospital on noncompliance with order for examination.
50-17-109. Order of commitment — warrant for transportation.
50-17-110. Confinement in hospital — submission to treatment.
50-17-111. Transfer of person to another hospital.
50-17-112. Procedure to obtain release from commitment.
50-17-113. Voluntary release.
50-17-114. Payment of costs, expenses, and fees.

Part 1

General Provisions

50-17-101. Policy of state. It is the public policy of the state to:

(1) protect persons from the danger of tuberculosis in a communicable state;

(2) provide and maintain a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease;

(3) cooperate with other state agencies and the federal government in carrying out these objectives.

History: En. Sec. 24, Ch. 197, L. 1967; R.C.M. 1947, 69-4301.

50-17-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Local board" means a city, county, city-county, or district board of health.

(3) "Tuberculosis" means a disease caused by the tubercle bacillus characterized by the production of tuberculous lesions.

History: Ap. p. Sec. 25, Ch. 197, L. 1967; Sec. 69-4302, R.C.M. 1947; (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4302.

50-17-103. Powers and duties of department. (1) The department shall:

(a) accept, spend, and distribute federal funds available for tuberculosis control;

(b) collect and study data on the incidence of tuberculosis;

(c) adopt rules for the determination of tuberculosis in a communicable state.

(2) The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

History: En. Secs. 26, 27, Ch. 197, L. 1967; amd. Secs. 45, 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4303, 69-4304.

50-17-104. Facilities for diagnosis and treatment of tuberculosis. (1) Galen state hospital shall maintain facilities to carry out this chapter.

(2) The charge for care, treatment, and maintenance at Galen state hospital shall be at the rate fixed by law.

History: En. Secs. 39, 40, Ch. 197, L. 1967; amd. Secs. 46, 47, Ch. 349, L. 1974; R.C.M. 1947, 69-4316(part), 69-4317.

50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to communicable tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis; or

(b) enter or return to a hospital for treatment if the person is a menace to public health.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis in a communicable state or has been exposed to communicable tuberculosis, is a menace to public health, and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) is suffering from tuberculosis in a communicable state, is a menace to public health, and has refused to enter or has left a hospital against the advice of a physician or health officer.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness shall be a physician.

History: (1), (2)En. Sec. 28, Ch. 197, L. 1967; Sec. 69-4305, R.C.M. 1947; (3), (4)En. Sec. 29, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4306, R.C.M. 1947; R.C.M. 1947, 69-4305, 69-4306; amd. Sec. 6, Ch. 37, L. 1979.

50-17-106. Hearing on the application. The procedure for a hearing on the application is as follows:

(1) A summons stating the time and place of the hearing and a copy of the application are personally served on the person.

(2) The summons, with endorsement of the time of service, is filed with the district court prior to the hearing.

(3) Not fewer than 3 or more than 7 days after service of the summons, a hearing is held in the district court.

(4) The court examines witnesses in attendance or others it wishes to call.

History: En. Sec. 30, Ch. 197, L. 1967; R.C.M. 1947, 69-4307.

50-17-107. Adjudication of application. Following the hearing, the court shall find that the allegations of the application are:

(1) true and order the person committed to a hospital;

(2) true and order the person to submit to an examination for tuberculosis; or

(3) not true and order the person discharged.

History: En. Sec. 31, Ch. 197, L. 1967; R.C.M. 1947, 69-4308.

50-17-108. Commitment to hospital on noncompliance with order for examination. If a person fails to comply with an order to submit to an examination for tuberculosis within the time set, the court shall order him committed to a hospital.

History: En. Sec. 32, Ch. 197, L. 1967; R.C.M. 1947, 69-4309.

50-17-109. Order of commitment — warrant for transportation. The court shall send certified copies of an order of commitment to the hospital and the department or local board of health and issue a warrant directed to the sheriff to transport the person to the designated hospital.

History: En. Sec. 33, Ch. 197, L. 1967; R.C.M. 1947, 69-4310.

50-17-110. Confinement in hospital — submission to treatment. A person committed under 50-17-107 or 50-17-108 shall remain at the hospital until discharged, but he is not required to submit to medical or surgical treatment without written consent. If the person is incompetent, consent by his next of kin or guardian is required. If a person is a minor, consent by his parent or guardian is required. The person in charge of the hospital may use reasonable means to insure that the person committed remains at the hospital.

History: En. Sec. 34, Ch. 197, L. 1967; R.C.M. 1947, 69-4311.

50-17-111. Transfer of person to another hospital. If it is in his best interest, a person may be transferred from the hospital to which he was committed to another hospital approved by the department. The person in charge of the hospital to which the person was committed shall notify the court that ordered commitment, and the department or local board that requested commitment, of the transfer.

History: En. Sec. 37, Ch. 197, L. 1967; R.C.M. 1947, 69-4314.

50-17-112. Procedure to obtain release from commitment. (1) A person committed under 50-17-107 or 50-17-108 may apply for a release.

(2) The procedure for the request and a hearing is:

(a) not fewer than 180 days after commitment, the person applies to the court that ordered commitment requesting release;

(b) not fewer than 3 or more than 7 days after receipt of the request, the court holds a hearing.

(3) Following the hearing, the court:

(a) orders his discharge if it finds he no longer has tuberculosis in a communicable state; or

(b) dismisses the request if it finds he still has tuberculosis in a communicable state.

History: En. Sec. 35, Ch. 197, L. 1967; R.C.M. 1947, 69-4312.

50-17-113. Voluntary release. If the person in charge of the hospital and the department or local board that requested commitment concur that a person is no longer a menace to public health, the person shall be released from the hospital. The person in charge of the hospital shall file a notice of date of release with the court that ordered commitment.

History: En. Sec. 36, Ch. 197, L. 1967; R.C.M. 1947, 69-4313.

50-17-114. Payment of costs, expenses, and fees. (1) Court costs, expenses, and all fees shall be paid by the treasurer of the county from which a person is committed.

(2) Expenses and fees shall be paid as follows:

(a) to sheriffs and their deputies the same fees allowed for similar services in district court;

(b) to physicians, not to exceed two, fees as set by the court;

(c) to witnesses the same fees and mileage provided for attendance in district court;

(d) to persons other than the sheriff or his deputies who transport a person to or from a hospital, witness fees and expenses as verified by the court.

(3) Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed.

History: (1), (2)En. Sec. 38, Ch. 197, L. 1967; Sec. 69-4315, R.C.M. 1947; (3)En. Sec. 39, Ch. 197, L. 1967; amd. Sec. 46, Ch. 349, L. 1974; Sec. 69-4316, R.C.M. 1947; R.C.M. 1947, 69-4315, 69-4316(part).

CHAPTER 18

VENEREAL DISEASE

Part 1 — General Provisions

Section

50-18-101. Venereal diseases defined.
50-18-102. Department to undertake control, prevention, and treatment of venereal diseases.
50-18-103. Cooperation with federal agencies — federal funds.
50-18-104. Serological test for syphilis.
50-18-105. Rules of department binding.
50-18-106. Duty to report cases.
50-18-107. Powers and duties of health officers.
50-18-108. Examination and treatment of prisoners.
50-18-109. Permissible release of information concerning infected persons.
50-18-110. Unlawful dispensation of drugs for cure or alleviation of venereal disease.
50-18-111. Certificate of freedom from venereal disease not to be issued.
50-18-112. Infected person not to expose another to venereal disease.
50-18-113. Violation a misdemeanor.

Part 1

General Provisions

50-18-101. Venereal diseases defined. Syphilis, gonorrhea, chancroid, lympho-granuloma, venereum, and granuloma inguinale are venereal diseases. Venereal diseases are contagious, infectious, communicable, and dangerous to public health.

History: En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part).

50-18-102. Department to undertake control, prevention, and treatment of venereal diseases. The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for venereal diseases and may conduct education campaigns for this purpose.

History: En. Sec. 98, Ch. 197, L. 1967; amd. Sec. 57, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part).

50-18-103. Cooperation with federal agencies — federal funds. (1) The department of health and environmental sciences shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of venereal diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of venereal diseases, deposit funds in the state treasury, and disburse the funds.

History: En. Secs. 98, 99, Ch. 197, L. 1967; amd. Secs. 57, 58, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part), 69-4603.

50-18-104. Serological test for syphilis. (1) The department of health and environmental sciences shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests.

(2) On request the department shall make laboratory tests required by this chapter without charge.

(3) The department shall destroy the results of a test if an erroneous report is made.

History: En. Sec. 107, Ch. 197, L. 1967; R.C.M. 1947, 69-4611.

50-18-105. Rules of department binding. Rules adopted by the department of health and environmental sciences for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

History: En. Sec. 112, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4616.

50-18-106. Duty to report cases. (1) A physician who diagnoses or treats a venereal disease shall make a record and report the case to the department of health and environmental sciences in the way and on forms provided by the department.

(2) If a physician or other person knows or has reason to suspect that a person who has venereal disease is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case.

History: En. Secs. 100, 103, Ch. 197, L. 1967; R.C.M. 1947, 69-4604, 69-4607.

50-18-107. Powers and duties of health officers. (1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

(a) examine or have examined persons reasonably suspected of being infected with venereal disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(d) investigate sources of infection of venereal disease.

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

History: **En. Sec. 101, Ch. 197, L. 1967; R.C.M. 1947, 69-4605.**

50-18-108. Examination and treatment of prisoners. Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for venereal disease. If infected, the person shall be treated by health authorities.

History: **En. Sec. 102, Ch. 197, L. 1967; R.C.M. 1947, 69-4606.**

50-18-109. Permissible release of information concerning infected persons. (1) Information concerning persons infected or reasonably suspected to be infected with venereal disease may only be released to:

(a) personnel of the department of health and environmental sciences; or

(b) a physician who has written consent of the person whose record is requested.

(2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in venereal disease eradication work, and such personnel are privileged and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work.

(3) The purpose of this section is to protect and preserve the principle of confidentiality in venereal disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all venereal disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate.

History: **En. Sec. 106, Ch. 197, L. 1967; amd. Sec. 1, Ch. 135, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4610.**

50-18-110. Unlawful dispensation of drugs for cure or alleviation of venereal disease. It is unlawful to prescribe, sell, or recommend any drugs, medicines, or other substances for the cure or alleviation of venereal disease except upon prescription signed by a physician legally authorized to practice medicine in this state.

History: **En. Sec. 104, Ch. 197, L. 1967; R.C.M. 1947, 69-4608.**

50-18-111. Certificate of freedom from venereal disease not to be issued. No person shall issue a certificate of freedom from venereal disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes.

History: **En. Sec. 105, Ch. 197, L. 1967; R.C.M. 1947, 69-4609.**

50-18-112. Infected person not to expose another to venereal disease. A person infected with a venereal disease shall not knowingly expose another person to infection.

History: **En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part).**

50-18-113. Violation a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department of health and environmental sciences concerning venereal disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

History: En. Sec. 113, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4617.

CHAPTER 19

PREGNANT WOMEN AND NEWBORN INFANTS

Part 1 — Serological Test for Women Seeking Prenatal Care

Section
50-19-101. Definitions.
50-19-102. Duties of department.
50-19-103. Prenatal blood sample required for serological test.
50-19-104. Approved laboratory to perform test.
50-19-105. Report of positive test results.
50-19-106. Certificate form.
50-19-107. Required and permissible exhibit of test results.
50-19-108. Unauthorized divulgence of information a misdemeanor.
50-19-109. Waiver of test by court when contrary to patient's religious creed.
50-19-110. Birth or fetal death certificate to state whether test made.

Part 2 — Metabolic Tests of Newborn Infants

50-19-201. Definitions.
50-19-202. Administration.
50-19-203. Metabolic tests.
50-19-204. Department and Boulder River school and hospital to furnish assistance when requested.

Part 1

Serological Test for Women Seeking Prenatal Care

50-19-101. Definitions. (1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

History: En. Sec. 1, Ch. 228, L. 1973; amd. Sec. 25, Ch. 187, L. 1977; R.C.M. 1947, 69-6701.

50-19-102. Duties of department. (1) The department shall provide all necessary printing and pay all necessary expenses relative to administration of this part.

(2) Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(3) The department may use information derived from reports of positive tests for venereal diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health.

History: **En. Secs. 3, 7, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(1), (3), 69-6707.**

50-19-103. Prenatal blood sample required for serological test. (1) Every female, regardless of age or marital status, seeking prenatal care from a physician is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(2) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(3) A person permitted to attend a pregnant woman, but not permitted to take blood samples, shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(4) Any physician or other person required to take the blood sample who violates this part is guilty of a misdemeanor. However, a person who requests a sample of blood in accordance with this provision and whose request is refused is not guilty of a violation of this section.

History: **En. Sec. 2, Ch. 228, L. 1973; R.C.M. 1947, 69-6702.**

50-19-104. Approved laboratory to perform test. (1) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department. Any other state, United States public health service, or United States armed forces laboratory shall be approved for the purpose of this part.

(2) The laboratory test may be made on request at the laboratory of the department. A reasonable fee for the test may be established by the department.

History: **En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(part).**

50-19-105. Report of positive test results. All positive laboratory tests for any venereal diseases shall be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting.

History: **En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(2).**

50-19-106. Certificate form. The certificate form to be provided the physician recording the results of the test made by the laboratory shall be the same form as that provided with respect to the premarital standard serological test in 40-1-204.

History: **En. Sec. 4, Ch. 228, L. 1973; amd. Sec. 26, Ch. 187, L. 1977; R.C.M. 1947, 69-6704.**

50-19-107. Required and permissible exhibit of test results. The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

History: **En. Sec. 5, Ch. 228, L. 1973; R.C.M. 1947, 69-6705.**

50-19-108. Unauthorized divulgence of information a misdemeanor. Certificates, laboratory statements or reports, or any other matters in this part referred to and the information therein contained shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports without authority to any person not by law entitled to them is guilty of a misdemeanor and may be fined not more than $100.

History: **En. Sec. 6, Ch. 228, L. 1973; R.C.M. 1947, 69-6706.**

50-19-109. Waiver of test by court when contrary to patient's religious creed. The district court within the county wherein any person affected by this part resides may waive the requirements of this part as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the part are contrary to the tenets or practices of the religious creed of which the applicant is an adherent and that the public health and welfare will not be injuriously affected thereby.

History: **En. Sec. 8, Ch. 228, L. 1973; R.C.M. 1947, 69-6708.**

50-19-110. Birth or fetal death certificate to state whether test made. A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date when the specimen was taken, and if no test was made, the reason shall be stated.

History: **En. Sec. 9, Ch. 228, L. 1973; R.C.M. 1947, 69-6709.**

Part 2

Metabolic Tests of Newborn Infants

50-19-201. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences.

(2) "Newborn" means any infant under 28 days of life.

(3) "Person" means any indvidual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

History: **En. Sec. 1, Ch. 227, L. 1973; R.C.M. 1947, 69-6710.**

50-19-202. Administration. This part shall be administered by the department, and the department may adopt rules for the administration of this part.

History: **En. Sec. 3, Ch. 227, L. 1973; R.C.M. 1947, 69-6712.**

50-19-203. Metabolic tests. (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for or a person responsible for the registration of birth of an infant shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

History: **En. Sec. 2, Ch. 227, L. 1973; R.C.M. 1947, 69-6711.**

50-19-204. Department and Boulder River school and hospital to furnish assistance when requested. (1) The department and the staff of the Boulder River school and hospital shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this part.

(2) The department may determine its procedure for advising the attending physician, the parents, or legal guardian of the newborn infant of any medical results of the test and the availability of assistance, services, or counseling of the department and the staff of the Boulder River school and hospital.

(3) The department may determine procedures for coordination with the Boulder River school and hospital in providing the services and assistance required in this part.

History: **En. Sec. 4, Ch. 227, L. 1973; R.C.M. 1947, 69-6713.**

CHAPTER 20

ABORTION

Part 1 — Montana Abortion Control Act

Section

50-20-101. Short title.
50-20-102. Statement of purpose.
50-20-103. Legislative intent.
50-20-104. Definitions.
50-20-105. Duties of department.
50-20-106. Consent to abortion.
50-20-107. Written notice to spouse or parent required.
50-20-108. Protection of premature infants born alive.
50-20-109. Control of practice of abortion.
50-20-110. Reporting of practice of abortion.
50-20-111. Right to refuse participation in abortion.
50-20-112. Penalties.

Part 1

Montana Abortion Control Act

50-20-101. Short title. This chapter shall be known and may be cited as the "Montana Abortion Control Act".

History: **En. 94-5-613 by Sec. 1, Ch. 284, L. 1974; R.C.M. 1947, 94-5-613.**

50-20-102. Statement of purpose. The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life.

History: En. 94-5-614 by Sec. 2, Ch. 284, L. 1974; R.C.M. 1947, 94-5-614.

50-20-103. Legislative intent. It is the intent of the legislature to restrict abortion to the extent permissible under decisions of appropriate courts or paramount legislation.

History: En. 94-5-623 by Sec. 11, Ch. 284, L. 1974; R.C.M. 1947, 94-5-623.

50-20-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(3) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:

(a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption.

(4) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

History: En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; R.C.M. 1947, 94-5-615(part).

50-20-105. Duties of department. (1) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(2) The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state resulting directly or indirectly from abortion, subject to the provisions of 50-20-110(5).

(3) The department shall report to the attorney general any apparent violation of this chapter.

History: (1)En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; Sec. 94-5-617, R.C.M. 1947; (2)En. 94-5-621 by Sec. 9, Ch. 284, L. 1974; Sec. 94-5-621, R.C.M. 1947; (3)En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; Sec. 94-5-619, R.C.M. 1947; R.C.M. 1947, 94-5-617(4), 94-5-619(6), 94-5-621.

50-20-106. Consent to abortion. (1) No abortion may be performed upon any woman in the absence of informed consent.

(2) Informed consent may be evidenced by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided in 50-20-104(3) and in which

the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(3) The above informed consent or consent is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(4) No executive officer, administrative agency, or public employee of the state or of any local governmental body has power to issue any order requiring an abortion or shall coerce any woman to have an abortion, nor shall any person coerce any woman to have an abortion.

(5) Violation of subsections (1) and (4) of this section is a misdemeanor.

History: (1)En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; Sec. 94-5-616, R.C.M. 1947; (2)En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; Sec. 94-5-615, R.C.M. 1947; R.C.M. 1947, 94-5-615(part), 94-5-616(part).

50-20-107. Written notice to spouse or parent required. (1) No abortion may be performed upon any woman in the absence of:

(a) the written notice to her husband, unless her husband is voluntarily separated from her;

(b) the written notice to a parent, if living, or the custodian or legal guardian of such woman if she is under 18 years of age and unmarried.

(2) Violation of this section is a misdemeanor.

History: En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; R.C.M. 1947, 94-5-616(part).

50-20-108. Protection of premature infants born alive. (1) A person commits the offense of criminal homicide, as defined in 45-5-101 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) Violation of subsection (3) of this section is a felony.

History: En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; R.C.M. 1947, 94-5-617(1) thru (3), (5).

50-20-109. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him setting forth in detail the facts upon which he relies in making such judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with such judgment. The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101(31). The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) of this section is a felony. Violation of subsection (4) of this section is a misdemeanor.

History: En. 94-5-618 by Sec. 6, Ch. 284, L. 1974; amd. Sec. 20, Ch. 359, L. 1977; R.C.M. 1947, 94-5-618.

50-20-110. Reporting of practice of abortion. (1) Every facility in which an abortion is performed within the state shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require, including but not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall, within 30 days after the abortion, file with the department a report upon a form prescribed by the department and certified by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this chapter shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law. Statistical data not identifying any individual involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

History: En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; R.C.M. 1947, 94-5-619(1) thru (5).

50-20-111. Right to refuse participation in abortion. (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions". The refusal of any person to advise concerning, perform, assist, or participate in abortion shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

(5) As used in this section, the term "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 94-5-620 by Sec. 8, Ch. 284, L. 1974; R.C.M. 1947, 94-5-620.

50-20-112. Penalties. (1) A person convicted of criminal homicide under this chapter is subject to the penalties prescribed by 45-5-101 through 45-5-104.

(2) A person convicted of a felony other than criminal homicide under this chapter is subject to a fine not to exceed $1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed $500, imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-622 by Sec. 10, Ch. 284, L. 1974; amd. Sec. 14, Ch. 338, L. 1977; R.C.M. 1947, 94-5-622.

CHAPTER 21

CADAVERS AND AUTOPSIES

Part 1 — General Provisions

Section
50-21-101. Procurement of cadavers.
50-21-102. Procedure to procure cadavers.
50-21-103. Limitations on right to perform autopsy or dissection.
50-21-104. Autopsies.
50-21-105. Morticians not affected.
50-21-106. Penalty for unauthorized post-mortem examinations.

Part 1

General Provisions

50-21-101. Procurement of cadavers. Any medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

History: En. Sec. 153, Ch. 197, L. 1967; R.C.M. 1947, 69-5101.

50-21-102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization having custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of health and environmental sciences showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body shall be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit shall accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that his body be buried immediately, the person or organization having custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy.

History: **En. Sec. 154, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5102.**

50-21-103. Limitations on right to perform autopsy or dissection. The right to perform an autopsy, dissect a human body, or make any post-mortem examination involving dissection of any part of a body is limited to cases where:

(1) specifically authorized by law;

(2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;

(3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;

(4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent so authorized;

(5) the decedent died in a hospital operated by the United States veterans administration, Montana school for the deaf and blind, or an institution in the department of institutions leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.

History: **En. Sec. 155, Ch. 197, L. 1967; R.C.M. 1947, 69-5103.**

50-21-104. Autopsies. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy; upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital or skilled nursing facility; to the next of kin of the decedent or the representative of the decedent's estate upon request, and to such other person lawfully requesting the report.

History: **En. Sec. 156, Ch. 197, L. 1967; amd. Sec. 1, Ch. 158, L. 1973; R.C.M. 1947, 69-5104.**

50-21-105. Morticians not affected. This chapter shall not restrict the right of a licensed mortician to dissect a human body for proper preparation of the body for burial, cremation, or other disposition provided by law.

History: **En. Sec. 157, Ch. 197, L. 1967; R.C.M. 1947, 69-5105.**

50-21-106. Penalty for unauthorized post-mortem examinations. Unless authorized by law, any person who performs an autopsy, dissection, or other post-mortem examination or causes it to be made is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding $500.

History: **En. Sec. 158, Ch. 197, L. 1967; R.C.M. 1947, 69-5106.**

CHAPTER 22

DETERMINATION OF DEATH

Part 1 — General Provisions

Section
50-22-101. Definition of death.

Part 1

General Provisions

50-22-101. Definition of death. A human body with irreversible cessation of total brain function, as determined according to usual and customary standards of medical practice, is dead for all legal purposes.

History: **En. 69-7201 by Sec. 1, Ch. 228, L. 1977; R.C.M. 1947, 69-7201.**

CHAPTERS 23 THROUGH 29

RESERVED

CHAPTER 30

CONSUMER PRODUCT SAFETY ACT

Part 1 — General Provisions

Section
50-30-101. Short title.
50-30-102. Definitions.
50-30-103. Department authorized to adopt rules.
50-30-104. Department to develop accident prevention and health oriented education programs.
50-30-105. Publication of information by department.
50-30-106. Department to conduct investigations.
50-30-107. Powers and duties of department's agents.
50-30-108. Carriers to permit inspection.

Part 2 — Hazardous Substances

50-30-201. Hazardous substance defined.
50-30-202. Misbranded hazardous substance defined.
50-30-203. Banned hazardous substance defined.
50-30-204. Toxic defined.
50-30-205. Highly toxic defined.
50-30-206. Corrosive defined.
50-30-207. Irritant defined.

50-30-208. Strong sensitizer defined.
50-30-209. Extremely flammable, flammable, and combustible defined.
50-30-210. Radioactive substance defined.
50-30-211. Label defined.
50-30-212. Electrical hazards.
50-30-213. Mechanical hazards.
50-30-214. Thermal hazards.
50-30-215. Declaration of hazardous substance.
50-30-216. Additional labeling requirements.
50-30-217. Exemption from labeling requirements.
50-30-218. When labeling requirement complied with.
50-30-219. Ban of hazardous substance authorized.
50-30-220. Toys and other children's articles.

Part 3 — Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts.
50-30-302. Notice and hearing required prior to prosecution.
50-30-303. Department and county attorney to prosecute violations.
50-30-304. Penalty.
50-30-305. Exceptions to penalty.
50-30-306. Injunction authorized.
50-30-307. Detainer of misbranded or banned hazardous substance.

Part 1

General Provisions

50-30-101. Short title. This chapter shall be cited as the "Montana Consumer Product Safety Act of 1975".

History: En. 69-7101 by Sec. 2, Ch. 394, L. 1975; R.C.M. 1947, 69-7101.

50-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(1) thru (3), (18).

50-30-103. Department authorized to adopt rules. (1) The authority to adopt rules for the efficient enforcement of this chapter is vested in the department.

(2) The department has the authority to adopt by reference without public hearing rules adopted under the Federal Hazardous Substances Act as amended.

History: En. 69-7109 by Sec. 9, Ch. 394, L. 1975; R.C.M. 1947, 69-7109.

50-30-104. Department to develop accident prevention and health oriented education programs. The department, in cooperation with other state and federal agencies, shall develop and conduct appropriate accident prevention and health oriented educational programs. The educational programs shall inform the public of the hazards, proper handling and use, disposal, storage, and transportation of hazardous substances and the proper medical and first-aid procedures for accidents resulting from hazardous substances.

History: En. 69-7112 by Sec. 12, Ch. 394, L. 1975; R.C.M. 1947, 69-7112.

50-30-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing any judgments, research findings, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated information regarding hazardous substances in situations involving imminent danger to health.

(3) Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: En. 69-7113 by Sec. 13, Ch. 394, L. 1975; R.C.M. 1947, 69-7113.

50-30-106. Department to conduct investigations. (1) The department shall conduct investigations of reported accidental injuries, illnesses, and deaths resulting from the use or misuse of all hazardous substances, as defined by 50-30-201(1)(a), intended or suitable for use by the general public.

(2) Investigations shall evaluate the causative hazardous substance and circumstances of the accident for enforcement of this chapter.

(3) If the offending hazardous substance is a pesticide regulated by another agency under the federal Environmental Pesticide Control Act or the Montana Pesticides Act, the investigation shall yield recommendations to the appropriate regulating agency for appropriate action.

History: En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(3).

50-30-107. Powers and duties of department's agents. (1) For enforcement of this chapter, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to:

(a) enter at reasonable times a factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction;

(b) enter a vehicle being used to transport or hold hazardous substances in commerce;

(c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling therein; and

(d) obtain samples of materials or packages or labeling thereof.

(2) If the officer or employee obtains a sample, prior to leaving the premises he shall pay or offer to pay the owner, operator, or agent in charge for the sample and give a receipt describing the samples obtained.

History: En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(1), (2).

50-30-108. Carriers to permit inspection. (1) For the purpose of enforcing the provisions of this chapter, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee at reasonable times to have access to and to copy all records showing the movement in commerce of any such hazardous substances, the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof.

(2) It is unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates, provided that evidence obtained under this section is not used in a criminal prosecution of the person from whom obtained.

(3) Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

History: En. 69-7111 by Sec. 11, Ch. 394, L. 1975; R.C.M. 1947, 69-7111.

Part 2

Hazardous Substances

50-30-201. Hazardous substance defined. (1) "Hazardous substance" means:

(a) a substance or mixture of substances which:

(i) is toxic;

(ii) is corrosive;

(iii) is an irritant;

(iv) is a strong sensitizer;

(v) is flammable or combustible; or

(vi) generates pressure through decomposition, heat, or other means if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(b) substances which the department by rule finds under 50-30-215 meet the requirements of subsection (1)(a) of this section;

(c) a radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health; or

(d) a toy or other article intended for use by children which presents an electrical, mechanical, or thermal hazard as determined by the department by rule in accordance with 50-30-220.

(2) (a) The term "hazardous substance" does not apply to pesticides subject to the federal Pesticide Environmental Control Act or the Montana Pesticides Act, to foods, drugs, and cosmetics subject to the Montana Food, Drug, and Cosmetic Act, or to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house.

(b) The term applies, however, to an article which is not itself a pesticide within the meaning of the federal Pesticide Environmental Control Act or the Montana Pesticide Act but which is a hazardous substance within the meaning of subsection (1) of this section by reason of bearing or containing a pesticide.

(c) The term also applies to pesticides whenever human health is directly affected from the use or misuse of pesticides requiring an accident investigation for the purpose of preparing recommendations to federal or state pesticide control agencies.

(3) The term "hazardous substance" does not include source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and rules issued pursuant thereto by the atomic energy commission.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(4).

50-30-202. Misbranded hazardous substance defined. (1) "Misbranded hazardous substance" means a hazardous substance (including a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted) intended or packaged in a form suitable for use by the public or by children which, except as otherwise provided under 50-30-216 or 50-30-217, fails to bear a label:

(a) which states conspicuously:

(i) the name and place of business of the manufacturer, packer, distributor, or seller;

(ii) the common or usual name or the chemical name (if there is not a common or usual name) of the hazardous substance or each component which contributes substantially to its hazard unless the department by rule permits or requires the use of a recognized generic name;

(iii) the signal word "danger" on substances which are extremely flammable, corrosive, or highly toxic;

(iv) the signal word on all other hazardous substances;

(v) an affirmative statement of the principal hazard or hazards, such as:

(A) "flammable";
(B) "combustible";
(C) "vapor harmful";
(D) "causes burns";
(E) "absorbed through skin"; or
(F) similar wording descriptive of the hazard;

(vi) precautionary measures describing the action to be followed or avoided, except when modified by a rule of the department under 50-30-216 or 50-30-217;

(vii) instruction, when necessary or appropriate, for first-aid treatment;

(viii) "poison" for any hazardous substance which is defined as "highly toxic" by 50-30-205; and

(ix) instructions for handling and storage of packages which require special care in handling or storage such as:

(A) "keep out of the reach of children" or its practical equivalent; or

(B) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

(b) on which a statement required under subsection (1)(a) of this section is located prominently and is in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(2) The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this subsection, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Montana Food, Drug, and Cosmetic Act.

History: (1)En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; Sec. 69-7102, R.C.M. 1947; (2)En. 69-7104 by Sec. 4, Ch. 394, L. 1975; Sec. 69-7104, R.C.M. 1947; R.C.M. 1947, 69-7102(13), 69-7104(part).

50-30-203. Banned hazardous substance defined. (1) "Banned hazardous substance" means:

(a) a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted; or

(b) a hazardous substance intended or packaged in a form suitable for use by the general public which the department by rule classifies as a banned hazardous substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of the substance by the general public is such that the objective of the protection of the public health and safety can be adequately served only by keeping the substance, when so intended or packaged, out of the channels of commerce.

(2) The department by rule shall exempt from subsection (1)(a) of this section articles such as chemical sets which, by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed the directions and warnings.

(3) Proceedings for the issuance, amendment, or repeal of rules under subsections (1)(b) and (2) of this section shall be governed by the provisions of 50-30-219 and 50-30-220.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(14).

50-30-204. Toxic defined. "Toxic" means a substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(5).

50-30-205. Highly toxic defined. (1) "Highly toxic" means a substance which falls within any of the following categories:

(a) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;

(b) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million or less by volume of gas or vapor or 2 milligrams per liter or less by volume of mist or dust if that concentration is likely to be encountered by man when the substance is used in a reasonably foreseeable manner; or

(c) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.

(2) If the department finds that available data on human experience with a substance indicates results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(6).

50-30-206. Corrosive defined. "Corrosive" means a substance which in contact with living tissue will cause destruction of tissue by chemical action but does not refer to action on inanimate surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(7).

50-30-207. Irritant defined. "Irritant" means a substance not corrosive within the meaning of 50-30-206 which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(8).

50-30-208. Strong sensitizer defined. "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(9).

50-30-209. Extremely flammable, flammable, and combustible defined. (1) "Extremely flammable" applies to a substance which has a flash point at or below 20 degrees F, as determined by the Tagliabue open cup tester.

(2) "Flammable" applies to a substance which has a flash point above 20 degrees to and including 80 degrees F, as determined by the Tagliabue open cup tester.

(3) "Combustible" applies to a substance which has a flash point above 80 degrees to and including 150 degrees F, as determined by the Tagliabue open cup tester.

(4) The flammability or combustibility of solids and the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to the materials or containers, respectively, and established by rules issued by the department, which rules shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with the methods used.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(10).

50-30-210. Radioactive substance defined. "Radioactive substance" means a substance which emits ionizing radiation.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(11).

50-30-211. Label defined. "Label" means a display of written, printed, or graphic matter upon the immediate container ("immediate container" does not include package liners) of a substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

50-30-212. Electrical hazards. An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(15).

50-30-213. Mechanical hazards. An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;

(2) from propulsion of the article (or a part or accessory thereof);

(3) from points or other protrusions, surfaces, edges, openings, or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the article;

(7) because the article (or a part or accessory thereof) may be aspirated or ingested;

(8) because of instability; or

(9) because of any other aspect of the article's design or manufacture.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(16).

50-30-214. Thermal hazards. An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(17).

50-30-215. Declaration of hazardous substance. When in the judgment of the department such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance a substance or mixture of substances which the department finds meets the requirements of 50-30-201(1)(a).

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(1).

50-30-216. Additional labeling requirements. If the department finds that the requirements of 50-30-202(1)(a) are not adequate for the protection of the public health and safety in view of the special hazard presented by a hazardous substance, the department may by rule establish such reasonable variations or additional labeling requirements as are necessary for the protection of the public health and safety, and a hazardous substance intended or packaged in a form suitable for use by the general public or by children which fails to bear a label in accordance with the rules is a misbranded hazardous substance.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(2).

50-30-217. Exemption from labeling requirements. If the department finds that because of the size of the package involved, because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall adopt rules exempting the substance from these requirements to the extent of being consistent with adequate protection of the public health and safety.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(3).

50-30-218. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears:

(1) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper; and

(2) on all accompanying literature where there are directions for use, written or otherwise.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

50-30-219. Ban of hazardous substance authorized. If the department finds that the hazard of an article subject to this chapter is such that labeling adequate to protect the public health and safety cannot be devised or the article presents an imminent danger to the public health and safety, the department may declare the article a banned hazardous substance and require its removal from commerce.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(4).

50-30-220. Toys and other children's articles. (1) A determination by the department that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by rule in accordance with this chapter.

(2) If, before or during a proceeding under subsection (1) of this section, the department finds that because of an electrical, mechanical, or thermal hazard distribution of a toy or other article involved presents an imminent hazard to the public health and the department gives notice of the finding, the toy or other article is a banned hazardous substance for purposes of this chapter until the proceeding has been completed. If not yet initiated when the notice is given, the proceeding shall be initiated as promptly as possible.

(3) (a) In the case of a toy or other article intended for use by children which is determined by the department to present an electrical, mechanical, or thermal hazard, a person who will be adversely affected by the determination may, at any time before the 60th day after the rule making the determination is issued by the department, file a petition with the court for a judicial review of the determination. A copy of the petition shall be immediately transmitted by the clerk of the court to the department. The department shall file in the court the record of the proceedings on which the department based its determination.

(b) If the petitioner applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was no opportunity to adduce the evidence in the proceeding before the department, the court may order the additional evidence (and evidence in rebuttal thereof) to be taken before the department in a hearing or in another manner and upon other terms and conditions as the court considers proper. The department may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file the modified or new findings and its recommendation, if any, for the modification or setting aside of its original determination with the return of the additional evidence.

(c) Upon the filing of the petition under subsection (3) of this section, the court has jurisdiction to review the determination of the department. If the court ordered additional evidence to be taken under subsection (3)(b) of this section, the court shall also review the department's determination to determine if, on the basis of the entire record before the court under subsections (3)(a) and (3)(b) of this section, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to a determination reviewed under subsection (3) of this section, the court may grant appropriate relief pending conclusion of the review proceedings.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(5).

Part 3

Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts. The following acts and the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305(2), which guarantee or undertaking is false, except by a person who relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method or process which as a trade secret is entitled to protection.

History: En. 69-7104 by Sec. 4, Ch. 394, L. 1975; R.C.M. 1947, 69-7104(part); amd. Sec. 7, Ch. 37, L. 1979.

50-30-302. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: **En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).**

50-30-303. Department and county attorney to prosecute violations. It is the duty of the department or the county attorney to whom the department reports a violation of this chapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: **En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).**

50-30-304. Penalty. A person who violates the provisions of 50-30-301 is guilty of a misdemeanor and shall be fined no more than $500 or be imprisoned for any term not to exceed 90 days, or both. For offenses committed with intent to defraud or mislead or for second and subsequent offenses, the penalty shall be imprisonment for any term not to exceed 1 year or a fine of no more than $3,000, or both.

History: **En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(1).**

50-30-305. Exceptions to penalty. No person is subject to the penalties of 50-30-304:

(1) for having violated 50-30-301(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless he refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom he purchased or received the hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to him; or

(2) for having violated 50-30-301(1) if he establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in this chapter.

History: **En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(2).**

50-30-306. Injunction authorized. In addition to the remedies hereinafter provided, the department is authorized to apply to court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-30-301, irrespective of whether or not there exists an adequate remedy at law.

History: **En. 69-7106 by Sec. 6, Ch. 394, L. 1975; R.C.M. 1947, 69-7106.**

50-30-307. Detainer of misbranded or banned hazardous substance. (1) If a duly authorized agent of the department finds or has probable cause to believe that a hazardous substance is misbranded or is a banned hazardous substance within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be misbranded or a banned hazardous substance, he shall petition the judge of the city, justice's, or district court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If the agent finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) (a) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under supervision of the agent, and all court costs and fees and storage and other proper expenses are to be taxed against the claimant of the article or his agent.

(b) If the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling under the supervision of an agent of the department. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. 69-7107 by Sec. 7, Ch. 394, L. 1975; amd. Sec. 30, Ch. 187, L. 1977; R.C.M. 1947, 69-7107.

CHAPTER 31

MONTANA FOOD, DRUG, AND COSMETIC ACT

Part 1 — General Provisions

Section

50-31-101. Short title.
50-31-102. Applicability of chapter.
50-31-103. Definitions.
50-31-104. Department authorized to adopt rules.
50-31-105. Publication of information by department.
50-31-106. Inspections and taking of samples authorized.
50-31-107. False or misleading representations.
50-31-108. Regulations concerning additives.
50-31-109. Use of additives.
50-31-110. Certain agricultural chemicals not color additives.
50-31-111. When labeling requirement complied with.

Part 2 — Food

50-31-201. Department authorized to adopt food standards.
50-31-202. When food adulterated.
50-31-203. When food misbranded.
50-31-204. Labeling requirements for products in semblance of honey or containing honey.

50-31-205. Permits for manufacture, processing, and packing of foods.
50-31-206. Permitholder to allow inspections.
50-31-207. Suspension of permit.
50-31-208. Sale of hamburger and imitation hamburger.

Part 3 — Drugs and Devices

50-31-301. Definitions.
50-31-302. Antiseptics considered to be germicides.
50-31-303. Certain drug advertisements deemed false.
50-31-304. Certain drugs and devices exempt from labeling requirements of chapter.
50-31-305. When drug or device adulterated.
50-31-306. When drug or device misbranded.
50-31-307. Dispensing of prescription drugs.
50-31-308. Prescription drugs exempt from certain provisions of chapter.
50-31-309. Removal of drugs from prescription requirement.
50-31-310. Narcotic and marihuana laws not affected.
50-31-311. New drug application required.
50-31-312. Exemptions from new drug application requirement.

Part 4 — Cosmetics

50-31-401. When cosmetic adulterated.
50-31-402. When cosmetic misbranded.
50-31-403. Exceptions for hair dyes.
50-31-404. Term hair dye not to include eyelash or eyebrow dyes.

Part 5 — Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts.
50-31-502. Unlawful labeling of products resembling honey.
50-31-503. Prosecution of minor violations not required.
50-31-504. Notice and hearing required prior to prosecution.
50-31-505. Duty of state or county attorneys to prosecute.
50-31-506. Penalties.
50-31-507. Exceptions to penalties.
50-31-508. Injunction to restrain prohibited acts.
50-31-509. Detainer of adulterated or misbranded articles.
50-31-510. Condemnation of perishables.

Part 1

General Provisions

50-31-101. Short title. This chapter may be cited as the "Montana Food, Drug, and Cosmetic Act".

History: En. Sec.1, Ch. 307, L. 1967; R.C.M. 1947, 27-701.

50-31-102. Applicability of chapter. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of these articles for sale; the sale, dispensing, and giving of these articles; and the supplying or applying of these articles in the conduct of a food, drug, or cosmetic establishment.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(q).

50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Color" includes black, white, and intermediate grays.

(3) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

(4) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(1)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(5) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(6) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(7) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(8) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(9) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(10) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(11) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(12) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(13) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(14) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point

of service, and any facility operated by a governmental entity where food is served.

(15) "Hamburger" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, and with or without the addition of seasoning, if no fat other that suet is incorporated in the hamburger, the total fat content does not exceed 20%, and no water, binders, or extenders are added.

(16) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(17) "Imitation hamburger" means "hamburger", as defined in subsection (15), to which has been added binders or extenders or both binders and extenders as those terms are understood by general custom and usage in the food industry.

(18) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(19) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(20) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(21) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(22) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(23) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(24) "Person" includes an individual, partnership, corporation, and association.

(25) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(26) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment.

(27) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(28) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(29) "State board" or "board" means the board of health and environmental sciences, provided for in 2-15-2104.

(30) "Wallboard" means any permanent sign used to display or describe food items for sale in a food service establishment.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(part); amd. Sec. 8, Ch. 37, L. 1979; amd. Sec. 1, Ch. 456, L. 1979.

50-31-104. Department authorized to adopt rules. (1) The department may adopt rules for the efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971; amd. Sec. 4, Ch. 349, L. 1974; R.C.M. 1947, 27-721.

50-31-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the department deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: En. Sec. 23, Ch. 307, L. 1967; R.C.M. 1947, 27-723.

50-31-106. Inspections and taking of samples authorized. (1) The department or its authorized agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(a) inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

(b) securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample.

(2) The department shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

History: En. Sec. 22, Ch. 307, L. 1967; amd. Sec. 3, Ch. 187, L. 1977; R.C.M. 1947, 27-722.

50-31-107. False or misleading representations. (1) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(2) If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

History: (1)En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-720, R.C.M. 1947; (2)En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; Sec. 27-702, R.C.M. 1947; R.C.M. 1947, 27-702(l), 27-720(a).

50-31-108. Regulations concerning additives. (1) The department, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes.

(2) It shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request.

(3) In adopting, amending, or repealing regulations relating to such substances the department shall consider among other relevant factors the following which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning such substance including, where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance;

(c) the probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) such substance in or on an article;

(ii) any substance formed in or on such article because of the use of such substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History: **En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(b).**

50-31-109. Use of additives. Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of 50-31-202(2) with respect to any food, 50-31-305(1) through (5) with respect to any drug or device, or 50-31-401(1) with respect to any cosmetic unless there is in effect a regulation pursuant to 50-31-108 limiting the quantity of such substance and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug, or cosmetic shall not by reason of bearing or containing such substance in accordance with the regulation be considered adulterated within the meaning of 50-31-202(1), 50-31-305(1) through (5), or 50-31-401(1).

History: **En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(a).**

50-31-110. Certain agricultural chemicals not color additives. Subsections (2) and (3) of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

History: **En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(u)(3).**

50-31-111. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information shall appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper.

History: **En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(i)(part); amd. Sec. 9, Ch. 37, L. 1979.**

Part 2

Food

50-31-201. Department authorized to adopt food standards. (1) Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, standard of quality, and/or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act, or the department may promulgate by reference the definitions and standards promulgated under authority of the federal act.

History: En. Sec. 9, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-709.

50-31-202. When food adulterated. A food shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such food shall not be considered adulterated under this subsection if the quantity of such substance in such food does not ordinarily render it injurious to health;

(2) it bears or contains any added poisonous or added deleterious substance, other than one which is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive, which is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal act as amended;

(4) it is or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal act as amended; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the federal act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal which has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(10) any substance has been substituted wholly or in part therefor;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of .4%, harmless natural wax not in excess of .4%, or harmless natural gum and pectin; provided that this paragraph shall not apply to any confectionery by reason of its containing less than .5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances;

(14) it is or bears or contains any color additive which is unsafe within the meaning of the federal act.

History: **En. Sec. 10, Ch. 307, L. 1967; R.C.M. 1947, 27-710.**

50-31-203. When food misbranded. A food shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately thereafter, the name of the food imitated;

(4) its container is so made, formed, or filled as to be misleading;

(5) in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to such definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) it is not subject to the provisions of subsection (7) of this section unless it bears labeling clearly giving:

(a) the common or usual name of the food, if any there be; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; provided that to the extent that compliance with the requirements of subsection (9)(b) is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department; and provided further that the requirements of subsection (9)(b) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact; provided that the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as defined in 81-22-101 shall be exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History: En. Sec. 11, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-711.

50-31-204. Labeling requirements for products in semblance of honey or containing honey. (1) Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word "honey". The word "imitation" may not be used in the name of a product which is in semblance of honey whether or not it contains any honey.

(2) The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product. The relative position of the word "honey" in the product name and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

50-31-205. Permits for manufacture, processing, and packing of foods. (1) Whenever the department finds after investigation that the distribution in Montana of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance to manufacturers, processors, or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food for such temporary period of time as may be necessary to protect the public health.

(2) After the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(a).

50-31-206. Permitholder to allow inspections. Any officer or employee duly designated by the department shall have access to any factory or establishment, the operator of which holds a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(c).

50-31-207. Suspension of permit. The department is authorized to suspend immediately upon notice any permit issued under authority of 50-31-205 if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the department shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(b).

50-31-208. Sale of hamburger and imitation hamburger. (1) No food service establishment may use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any imitation hamburger. A food service establishment selling or serving imitation hamburger may refer to the product as "imitation hamburger" or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If imitation hamburger is sold or served in a food service establishment, a list of ingredients must appear on the menu, or, if there is no menu, on a wallboard or placard as follows:

(a) The term "imitation hamburger" or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu, the lettering on the wallboard or placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the wallboard or placard.

(d) The wallboard or placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served.

History: En. Sec. 5, Ch. 456, L. 1979.

Compiler's Comments

Codification. Sec. 6, Ch. 456, L. 1979, provided: "It is intended that section 5 be enacted as an integral part of chapter 31, Title 50, MCA, and that the provisions of chapter 31, Title 50, MCA, apply to section 5."

Part 3

Drugs and Devices

50-31-301. *(Temporary)* **Definitions.** (1) As used in this part, the term "established name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply;

(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) For the purpose of this part, the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

50-31-301. *(Effective January 1, 1980)* **Definitions.** As used in this part, the following definitions apply:

(1) "Established name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply;

(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) "Antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(3) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part); amd. Sec. 1, Ch. 403, L. 1979.

50-31-302. Antiseptics considered to be germicides. The representation of a drug in its labeling or advertisement as an antiseptic is considered to be a representation that it is a germicide except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(n).

50-31-303. Certain drug advertisements deemed false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases

HAROLD H. HARRISON
ATTORNEY AT LAW

named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History: En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-720(b); amd. Sec. 10, Ch. 37, L. 1979.

50-31-304. Certain drugs and devices exempt from labeling requirements of chapter. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with regulations issued by the department or under the federal act.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part).

50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in

such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor.

History: **En. Sec. 14, Ch. 307, L. 1967; R.C.M. 1947, 27-714; amd. Sec. 11, Ch. 37, L. 1979.**

50-31-306. *(Temporary)* **When drug or device misbranded.** (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit-forming";

(e) if it is a drug unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

50-31-306. *(Effective January 1, 1980)* **When drug or device misbranded.** (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

History: En. Secs. 15, 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part), 27-716(d); amd. Sec. 12, Ch. 37, L. 1979; amd. Sec. 2, Ch. 403, L. 1979.

Compiler's Comments

Effective date. Sec. 3, Ch. 403, L. 1979, provided: "This act is effective January 1, 1980."

50-31-307. Dispensing of prescription drugs. (1) A drug intended for use by man which:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer such drug shall be dispensed only:

(i) upon a written prescription of a practitioner licensed by law to administer such drug;

(ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist; or

(iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist.

(2) The act of dispensing a drug contrary to the provisions of this section shall be deemed to be an act which results in a drug being misbranded while held for sale.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(a).

50-31-308. Prescription drugs exempt from certain provisions of chapter. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of 50-31-306, except subsections (1)(a), (1)(j), (1)(k), (1)(m), (1)(n), and the packaging requirements of subsections (1)(g) and (1)(h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(b).

50-31-309. Removal of drugs from prescription requirement. The department may by regulation remove drugs subject to 50-31-306(1)(d) and 50-31-311 from the requirements of 50-31-307 when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the department, be removed from the requirements of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(c).

50-31-310. Narcotic and marihuana laws not affected. Nothing in 50-31-306(2), 50-31-307, 50-31-308, or 50-31-309 shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marihuana, as defined in the applicable federal and state laws relating to narcotic drugs and marihuana.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(e).

50-31-311. New drug application required. (1) No person shall sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act; or

(b) when not subject to the federal act, such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof and, prior to selling or offering for sale such drug, there has been filed with the department an application setting forth:

(i) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;

(ii) a full list of the articles used as components of such drug;

(iii) a full statement of the composition of such drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

(v) such samples of such drug and of the articles used as compo nents thereof as the department may require; and

(vi) specimens of the labeling proposed to be used for such drug.

(2) An application provided for in subsection (1)(b) shall become effective on the 180th day after the filing thereof, except that, if the department finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, it shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) An order refusing to permit an application under this section to become effective may be revoked by the department.

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(a) thru (c).

50-31-312. Exemptions from new drug application requirement. (1) Section 50-31-311 shall not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act;

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262); or

(d) any drug which is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(21) shall not apply to any drug, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug, which on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(21) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act.

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(d), (e); amd. Sec. 2, Ch. 456, L. 1979.

Part 4

Cosmetics

50-31-401. When cosmetic adulterated. A cosmetic shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

(2) it consists in whole or in part of any filthy, putrid, or decomposed substance;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(4) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) it is not a hair dye and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

50-31-402. When cosmetic misbranded. A cosmetic shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) in package form unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor; and

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(3) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) its container is so made, formed, or filled as to be misleading;

(5) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History: En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-719(part).

50-31-403. Exceptions for hair dyes. (1) Section 50-31-401 shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate directions for such preliminary testing.

(2) Subsection 50-31-402(5) shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in 50-31-404).

History: (1)En. Sec. 18, Ch. 307, L. 1967; Sec. 27-718, R.C.M. 1947; (2)En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-719, R.C.M. 1947; R.C.M. 1947, 27-718(part), 27-719(part).

50-31-404. Term hair dye not to include eyelash or eyebrow dyes. For the purpose of 50-31-401(5) and 50-31-403, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Part 5

Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts. The following acts and the causing thereof within the state of Montana are hereby prohibited:

(1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food, drug, device, or cosmetic;

(3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 50-31-205 or 50-31-311;

(5) the dissemination of any false advertisement;

(6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device, or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic if such act is done while such article is held for sale and results in such article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act;

(11) the using on the labeling of any drug or in any advertisement relating to such drug of any representation or suggestion that an application with respect to such drug is effective under 50-31-311 or that such drug complies with the provisions of 50-31-311;

(12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal or to transmit to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold or such other printed matter as is approved under the federal act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(13) placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing;

(14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof with knowledge that the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (13) hereof;

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;

(16) the using by any person to his own advantage or revealing, other than to the state board, officers or employees of the department, or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity, as defined in this chapter, if such commodity is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(a) are engaged in the packaging or labeling of such commodities; or

(b) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this chapter.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(1) thru (16).

50-31-502. Unlawful labeling of products resembling honey. It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey if it is not honey.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

50-31-503. Prosecution of minor violations not required. Nothing in this chapter shall be construed as requiring the department to report for the institution of proceedings under this chapter minor violations of this chapter whenever the department believes that the public interest will be adequately served in the circumstances by a suitable written notice of warning.

History: En. Sec. 8, Ch. 307, L. 1967; R.C.M. 1947, 27-708.

50-31-504. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

50-31-505. Duty of state or county attorneys to prosecute. Each state attorney or county attorney to whom the department reports a violation of this chapter shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

50-31-506. Penalties. (1) Any person who violates any of the provisions of 50-31-204, 50-31-501, 50-31-502, or 50-31-208 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine.

History: **En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(a); amd. Sec. 3, Ch. 456, L. 1979.**

50-31-507. Exceptions to penalties. (1) No person shall be subject to the penalties of 50-31-506 for having violated subsection (1) or (3) of 50-31-501 if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the article to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(2) No publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under 50-31-506 by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the state of Montana who causes him to disseminate such advertisement.

History: **En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(b), (c).**

50-31-508. Injunction to restrain prohibited acts. In addition to the remedies hereinafter provided, the department is hereby authorized to apply to district court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-204, 50-31-501, 50-31-502, or 50-31-208 irrespective of whether or not there exists an adequate remedy at law.

History: **En. Sec. 4, Ch. 307, L. 1967; R.C.M. 1947, 27-704; amd. Sec. 4, Ch. 456, L. 1979.**

50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded, he shall petition the justice of peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the

expense of the claimant thereof under the supervision of the agent and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling or processing under the supervision of an agent of the department. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: **En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(1) thru (3).**

50-31-510. Condemnation of perishables. Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable article which is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the article being hereby declared to be a nuisance, the department or its authorized agent shall immediately condemn or destroy the article or in any other manner render the article unsalable as human food.

History: **En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(4).**

CHAPTER 32

CONTROLLED SUBSTANCES

Part 1 — General Provisions

Section
50-32-101. Definitions.
50-32-102. Uniformity of construction.
50-32-103. Board to administer chapter.
50-32-104. Board's authority limited.
50-32-105. Board to conduct educational programs.
50-32-106. Board to encourage research.

Part 2 — Scheduling of Dangerous Drugs

50-32-201. General criteria to be considered.
50-32-202. Designation of drug as dangerous drug.
50-32-203. Effect of rescheduling under federal law.
50-32-204. Immediate precursors.
50-32-205. Nonprescription drugs not to be scheduled.
50-32-206. Use of names of scheduled drugs.
50-32-207. Order forms for drugs in Schedules I and II.
50-32-208. Prescription and medical requirements for scheduled drugs.
50-32-209. Annual republication of schedules.
Sections 50-32-210 through 50-32-220 reserved.
50-32-221. Criteria for placement of drug in Schedule I.
50-32-222. Specific dangerous drugs included in Schedule I.
50-32-223. Criteria for placement of drug in Schedule II.

50-32-224. Specific dangerous drugs included in Schedule II.
50-32-225. Criteria for placement of drug in Schedule III.
50-32-226. Specific dangerous drugs included in Schedule III.
50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III.
50-32-228. Criteria for placement of drug in Schedule IV.
50-32-229. Specific dangerous drugs included in Schedule IV.
50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV.
50-32-231. Criteria for placement of drug in Schedule V.
50-32-232. Specific dangerous drugs included in Schedule V.

Part 3 — Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser.
50-32-302. Exceptions to registration requirement.
50-32-303. Waiver of registration requirement for practitioners licensed by federal government.
50-32-304. Waiver of registration requirement when in public interest.
50-32-305. Separate registration required.
50-32-306. Criteria for registration of manufacturers and distributors.
50-32-307. Manufacture and distribution limited by registration.
50-32-308. Criteria for registration of practitioners.
50-32-309. Registrants to maintain records and inventories.
50-32-310. Inspections authorized.
50-32-311. Revocation or suspension of registration.
50-32-312. Procedure for denial, suspension, revocation, or refusal to renew registration.
50-32-313. Practitioner's failure to register a misdemeanor.

Part 4 — Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance.
50-32-402. Reports required — exceptions.
50-32-403. Common reporting form.
50-32-404. Loss, theft, or other discrepancy to be reported.
50-32-405. Violation — penalties.

Part 1

General Provisions

50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent); or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists provided for in 2-15-1609.

(4) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug which or the container or labeling of which without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V hereinafter set forth.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of professional and occupational licensing provided for in Title 2, chapter 15, part 16.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary or any supplement to any of them;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(iii) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(iv) a substance intended for use as a component of any article specified in (a)(i), (a)(ii), or (a)(iii) of this subsection.

(b) "Drug" does not include a device or its components, parts, or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists finds and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container.

(b) "Manufacture" does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice; or

(ii) by a practitioner or his authorized agent under his supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(16) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in (17)(a) of this section, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species papaver somniferum 1., except its seeds.

(20) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(23) The term "prescription" is given the meaning it has in 37-7-101.

(24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(25) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(26) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

History: En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974; amd. Sec. 1, Ch. 382, L. 1975; amd. Sec. 6, Ch. 187, L. 1977; R.C.M. 1947, 54-301.

50-32-102. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973; R.C.M. 1947, 54-326.

50-32-103. Board to administer chapter. (1) The board shall administer this chapter and may add drugs to or delete or reschedule all drugs enumerated in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 pursuant to the rulemaking procedures of the Montana Administrative Procedure Act.

(2) The board shall promulgate rules for its administration which are not inconsistent with this chapter and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state. The maximum fee for any registration shall not exceed $100 per year.

History: En. Secs. 2, 15, Ch. 412, L. 1973; amd. Secs. 2, 5, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part), 54-315.

50-32-104. Board's authority limited. Authority to control under 50-32-103 does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout, or tobacco.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(5).

50-32-105. Board to conduct educational programs. (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs.

(2) In connection with these programs, it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(1).

50-32-106. Board to encourage research. (1) The board shall encourage research on misuse and abuse of dangerous drugs.

(2) In connection with the research and in furtherance of the enforcement of this chapter, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: **En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(2) thru (4).**

Part 2

Scheduling of Dangerous Drugs

50-32-201. General criteria to be considered. In making a determination regarding a drug, the board shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the drug;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the drug to produce psychic or physiological dependence liability; and

(8) whether the drug is an immediate precursor of a drug already controlled under this chapter.

History: **En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part).**

50-32-202. Designation of drug as dangerous drug. After considering the factors enumerated in 50-32-201, the board shall make findings with respect thereto, and if it finds the drug has a potential for abuse, it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(2).

50-32-203. Effect of rescheduling under federal law. If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug unless, within that 30-day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the board, control under this chapter is stayed until the board's decision is published.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(4).

50-32-204. Immediate precursors. If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(3).

50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if such drug may, under the Federal Food, Drug, and Cosmetic Act and 50-31-307(1)(b) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(6).

50-32-206. Use of names of scheduled drugs. The dangerous drugs listed or to be listed in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973; amd. Sec. 3, Ch. 350, L. 1974; R.C.M. 1947, 54-303.

50-32-207. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section unless the board prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973; R.C.M. 1947, 54-321.

50-32-208. Prescription and medical requirements for scheduled drugs. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced

promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

History: En. Sec. 22, Ch. 412, L. 1973; amd. Sec. 10, Ch. 350, L. 1974; R.C.M. 1947, 54-322; amd. Sec. 13, Ch. 37, L. 1979.

50-32-209. Annual republication of schedules. The board shall revise and the department shall republish the schedules of dangerous drugs annually.

History: En. Sec. 14, Ch. 412, L. 1973; amd. Sec. 4, Ch. 350, L. 1974; R.C.M. 1947, 54-314.

50-32-210 through 50-32-220 reserved.

50-32-221. Criteria for placement of drug in Schedule I. The board shall place a drug in Schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973; R.C.M. 1947, 54-304.

50-32-222. Specific dangerous drugs included in Schedule I. The dangerous drugs listed in this section are included in Schedule I:

(1) any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation: acetylmethadol, allylprodine, alphacetylmethadol, alphameprodine, alphamethadol, benzethidine, betacetylmethadol, betameprodine, betamethadol, betaprodine, clonitazene, dextromoramide, dextrorphan, diampromide, diethylthiambutene, dimenoxadol, dimepheptanol, dimethylthiambutene, dioxaphetyl butyrate, dipipanone, ethylmethylthiambutene, etonitazene, etoxeridine, furethidine, hydroxypethidine, ketobemidone, levomoramide, levophenacylmorphan, morpheridine, noracymethadol, norlevorphanol, normethadone, norpipanone, phenadoxone, phenampromide, phenomorphan, phenoperidine, piritramide, proheptazine, properidine, racemoramide, and trimeperidine;

(2) any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: acetorphine, acetyldihydrocodeine, benzylmorphine, codeine methylbromide, codeine-n-oxide, cyprenorphine, desomorphine, dihydromorphine, etorphine, heroin, hydromorphinol, methyl-desorphine, methyldihydromorphine, morphine methylbromide, morphine

methylsulfonate, morphine-n-oxide, myrophine, nicocodeine, nicomorphine, normorphine, phoclodine, and thebacon;

(3) any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic drugs, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxy amphetamine, 5-methoxy-3, 4-methylenedioxy amphetamine, 3, 4, 5-trimethoxy amphetamine, bufotenine, diethyltryptamine, dimethyltryptamine, 4-methyl 1-2, 5-dimethoxylamphetamine, ibogaine, lysergic acid diethylamide, marihuana, mescaline, peyote, n-ethyl-3-piperidyl benzilate, n-methyl-3-piperidyl benzilate, psilocybin, psilocyn, tetrahydrocannabinols, and 2, 5-dimethoxyamphetamine. If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols shall automatically be rescheduled from Schedule I to Schedule II.

History: **En. Sec. 5, Ch. 412, L. 1973; R.C.M. 1947, 54-305; amd. Sec. 1, Ch. 320, L. 1979.**

50-32-223. Criteria for placement of drug in Schedule II. The board shall place a drug in Schedule II if it finds that:

(1) the drug has high potential for abuse;

(2) the drug has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

History: **En. Sec. 6, Ch. 412, L. 1973; R.C.M. 1947, 54-306.**

50-32-224. Specific dangerous drugs included in Schedule II. The dangerous drugs listed in this section are included in Schedule II:

(1) any of the following drugs, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in subsection (a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(2) any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) alphaprodine;

(b) anileridine;

(c) bezitramide;

(d) dihydrocodeine;
(e) diphenoxylate;
(f) fentanyl;
(g) isomethadone;
(h) levomethorphan;
(i) levorphanol;
(j) metazocine;
(k) methadone;
(l) methadone—intermediate;
(m) 4-cyano-2-dimethyl-amino-4;
(n) 4-diphenyl butane;
(o) moramide—intermediate;
(p) 2-methyl-3-morpholino-1;
(q) 1-diphenyl-propane-carboxylic acid;
(r) pethidine;
(s) pethidine—intermediate—a;
(t) 4-cyano-1-methyl-4-phenylpiperidine;
(u) pethidine—intermediate—b;
(v) ethyl-4-phenylpiperidine-4-carboxylate;
(w) pethidine—intermediate—c;
(x) 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(y) phenazocine;
(z) piminodine;
(aa) racemethorphan; and
(bb) racemorphan;

(3) any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) any drug which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(d) methylphenidate.

History: En. Sec. 7, Ch. 412, L. 1973; R.C.M. 1947, 54-307.

50-32-225. Criteria for placement of drug in Schedule III. The board shall place a drug in Schedule III if it finds that:

(1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973; R.C.M. 1947, 54-308.

50-32-226. Specific dangerous drugs included in Schedule III. The dangerous drugs listed in this section are included in Schedule III:

(1) unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following drugs having a

potential for abuse associated with a depressant effect on the central nervous system:

(a) any drug which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those drugs which are specifically listed in other schedules;

(b) chlorhexadol;

(c) glutethimide;

(d) lysergic acid;

(e) lysergic acid amide;

(f) methyprylon;

(g) phencyclidine;

(h) sulfondiethylmethane;

(i) sulfonethylmethane; and

(j) sulfonmethane;

(2) nalorphine;

(3) any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

(a) not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

History: **En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(1) thru (4).**

50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in 50-32-226(1) and (2) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(5).

50-32-228. Criteria for placement of drug in Schedule IV. The board shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

History: En. Sec. 10, Ch. 412, L. 1973; R.C.M. 1947, 54-310.

50-32-229. Specific dangerous drugs included in Schedule IV. The following dangerous drugs are included in Schedule IV: any material, compound, mixture, or preparation which contains any quantity of the following drugs having a potential for abuse associated with a depressant effect on the central nervous system: barbital, chloral betaine, chloral hydrate, ethchlorvynol, ethinamate, methohexital, meprobamate, methylphenobarbital, paraldehyde, petrichloral, and phenobarbital.

History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(1), (2); amd. Sec. 14, Ch. 37, L. 1979.

50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV. The board may except by rule any compound, mixture, or preparation containing any depressant drug listed in 50-32-229 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(3).

50-32-231. Criteria for placement of drug in Schedule V. The board shall place a drug in Schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: En. Sec. 12, Ch. 412, L. 1973; R.C.M. 1947, 54-312.

50-32-232. Specific dangerous drugs included in Schedule V. The following dangerous drugs are included in Schedule V: any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;

(2) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

History: En. Sec. 13, Ch. 412, L. 1973; R.C.M. 1947, 54-313; amd. Sec. 15, Ch. 37, L. 1979.

Part 3

Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must, on and after January 1, 1974, obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this chapter.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(1), (2).

50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(3).

50-32-303. Waiver of registration requirement for practitioners licensed by federal government. The board shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(4).

50-32-304. Waiver of registration requirement when in public interest. The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(5).

50-32-305. Separate registration required. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(6).

50-32-306. Criteria for registration of manufacturers and distributors. (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 unless it determines that the issuance of that registration would be inconsistent with the public interest.

(2) In determining the public interest, the board shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(3) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(1), (4).

50-32-307. Manufacture and distribution limited by registration. Registration under 50-32-306 does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(2).

50-32-308. Criteria for registration of practitioners. (1) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this chapter in another capacity.

(2) Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(3).

50-32-309. Registrants to maintain records and inventories. Persons registered to manufacture, distribute, or dispense dangerous drugs under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules the board issues.

History: En. Sec. 20, Ch. 412, L. 1973; R.C.M. 1947, 54-320.

50-32-310. Inspections authorized. The board may have the establishment of a registrant or applicant for registration inspected.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(7).

50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;

(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: En. Sec. 18, Ch. 412, L. 1973; amd. Sec. 8, Ch. 350, L. 1974; R.C.M. 1947, 54-318.

50-32-312. Procedure for denial, suspension, revocation, or refusal, to renew registration. (1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration, which remains in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under 50-32-311 or whenever renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973; amd. Sec. 9, Ch. 350, L. 1974; amd. Sec. 7, Ch. 187, L. 1977; R.C.M. 1947, 54-319.

50-32-313. Practitioner's failure to register a misdemeanor. Practitioners who fail or refuse to register as required by this chapter shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed $1,000, imprisoned in the county jail not to exceed 1 year, or both.

History: En. Sec. 29, Ch. 412, L. 1973; R.C.M. 1947, 54-327.

Part 4

Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state must submit a report to the department of justice detailing all such transactions:

(a) phenyl-2-propanone;
(b) methylamine;
(c) d-lysergic acid;
(d) ergotamine tartrate;
(e) diethyl malonate;
(f) malonic acid;
(g) ethyl malonate;
(h) barbituric acid; and
(i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances to the list of regulated substances detailed in subsection (1), if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

(a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to his patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacists who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university.

History: En. Sec. 1, Ch. 227, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 227, L. 1979, provided: "Those substances listed in section 1 can be procured from most commercial chemical warehouses just as numerous other chemicals can be obtained. However, those substances listed in section 1 can be used in the manufacture of several different dangerous drugs, including amphetamine, methamphetamine and phencyclidine. The intent of the legislation requiring reporting is to monitor commercial sales of those chemicals that can be readily used to produce dangerous drugs. Two purposes will be served by mandatory reporting. First of all, it will deter those who do not have a legitimate need for the chemicals from making purchases, knowing that the purchase will be reported. Secondly, by monitoring the sales the Department of Justice will be "tipped" to large purchases by illegitimate purchasers thereby preventing the possible manufacture and consumption of a controlled drug."

Incorporation into existing law. Sections 50-32-401 through 50-32-405 were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of the Title 50, chapter 32, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in chapter 32, including 50-32-103. See 1-11-103(4).

50-32-402. Reports required — exceptions. (1) Except as provided in subsection (2), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance regulated pursuant to 50-32-401 to a person in this state must, within 72 hours, submit a report of the transaction to the department of justice.

(2) The department may authorize the submission of the reports on a monthly basis for repeated, regular transactions between the furnisher and the recipient involving the same substance, if the department determines:

(a) a pattern of regular supply of the substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; and

(b) the recipient has established a record of use of the substance for lawful purposes.

History: En. Sec. 2, Ch. 227, L. 1979.

50-32-403. Common reporting form. (1) The department of justice must provide a common reporting form for the report required under 50-32-401.

(2) The form must contain the following information:

(a) name of the substance;

(b) quantity of the substance sold, transferred, or furnished;

(c) the date the substance was sold, transferred, or furnished;

(d) the name and address of the person buying or receiving the substance; and

(e) the name and address of the manufacturer, wholesaler, or retailer.

History: En. Sec. 3, Ch. 227, L. 1979.

50-32-404. Loss, theft, or other discrepancy to be reported. (1) The theft or loss of a substance regulated in accordance with 50-32-401 must be reported to the department of justice within 3 days after the theft or loss is discovered.

(2) Any difference between the quantity received of any substance regulated as provided in 50-32-401 and the quantity shipped must be reported to the department of justice within 3 days of the discovery of the discrepancy.

(3) A report made pursuant to this section shall also include the name of the common carrier or person who transported the substance and the date of shipment.

History: **En. Sec. 4, Ch. 227, L. 1979.**

50-32-405. Violation — penalties. (1) A person commits the offense of failure to report sale or transfer of a precursor to a controlled substance if he purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the sale or transfer of a precursor to a controlled substance shall be fined not more than $10,000 or imprisoned in the state prison for not more than 10 years, or both.

History: **En. Sec. 5, Ch. 227, L. 1979.**

CHAPTER 33

BLOOD AND BLOOD PRODUCTS

Part 1 — General Provisions

Section
50-33-101. Labeling of containers by blood banks required.
50-33-102. Furnishing of blood and blood products declared service and not sale.
50-33-103. Immunity of physicians and hospitals.
50-33-104. Immunity of blood banks.

Part 1

General Provisions

50-33-101. Labeling of containers by blood banks required. Each container or package containing any whole blood, plasma, blood products, or blood derivatives sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein was tested as required in 50-33-104, giving the date of the test and such information as is necessary to designate the type of test made.

History: **En. Sec. 3, Ch. 284, L. 1971; R.C.M. 1947, 69-2205.**

50-33-102. Furnishing of blood and blood products declared service and not sale. The furnishing of and the injecting or transfusing into the human body of whole blood, plasma, blood products, and blood derivatives by a hospital, long-term care facility, or doctor of any such substances obtained from any source which said hospital, long-term care facility, or doctor is not directly or indirectly financially interested in or has any control over is hereby declared not to be a sale of such whole blood, plasma, blood products, or blood derivatives for any purpose.

History: **En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part).**

50-33-103. Immunity of physicians and hospitals. No physician, long-term care facility, or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital, long-term care facility, or doctor, for injuries resulting from the furnishing or performing of such services.

History: **En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part).**

50-33-104. Immunity of blood banks. No blood bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting or transfusing of whole blood, plasma, blood products, or blood derivatives supplied by any such blood bank to any hospital or physician if such blood products have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks and by such test are not found to be dangerous to the health of the recipient of such blood products.

History: **En. Sec. 2, Ch. 284, L. 1971; R.C.M. 1947, 69-2204.**

CHAPTER 34

FLOUR AND BREAD

Part 1 — General Provisions

Section

50-34-101. Definitions.
50-34-102. Department to adopt rules.
50-34-103. Rules to be published.
50-34-104. Inspections and taking of samples authorized.
50-34-105. Vitamin and mineral content requirements for flour.
50-34-106. Exceptions to vitamin and mineral requirements for flour.
50-34-107. Vitamin and mineral content requirements for bread.
50-34-108. Vitamin and mineral requirements to be uniform with federal standards.
50-34-109. Modification of vitamin and mineral requirements when ingredients scarce.
50-34-110. Penalty.

Part 1

General Provisions

50-34-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour, whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, parkerhouse rolls, and hard rolls, such as Vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

History: En. Sec. 1, Ch. 274, L. 1971; amd. Sec. 5, Ch. 349, L. 1974; R.C.M. 1947, 27-801.

50-34-102. Department to adopt rules. The department shall adopt rules and orders for the efficient enforcement of this chapter.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(1).

50-34-103. Rules to be published. (1) Orders and rules adopted by the department under this chapter shall be published in the manner prescribed in subsection (2) of this section and, within the limits specified by this chapter, shall become effective on the date the department fixes.

(2) When under this chapter publication of any notice, order, or rule is required, the publication shall be made at least once in at least one daily newspaper of general circulation printed and published in this state.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(4), (5).

50-34-104. Inspections and taking of samples authorized. For the purpose of this chapter, the department may take samples for analysis, conduct examinations and investigations, and enter at reasonable times a factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held or a vehicle being used for the transportation thereof and may inspect the place or vehicle and any flour, white bread, or rolls therein and all pertinent equipment, materials, containers, and labeling.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(6).

50-34-105. Vitamin and mineral content requirements for flour. (1) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale, for human consumption in this state, flour unless the following vitamins and minerals are contained in each pound of such flour:

(a) not less than 2.0 milligrams and not more than 2.5 milligrams of thiamine;

(b) not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin;

(c) not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacinamide;

(d) not less than 13.0 milligrams and not more than 16.5 milligrams of assimilable iron (Fe).

(2) Self-rising flour, in addition to the above ingredients, shall contain not less than 500 milligrams and not more than 1500 milligrams of assimilable calcium (Ca).

History: **En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).**

50-34-106. Exceptions to vitamin and mineral requirements for flour. (1) The terms of 50-34-105 shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate in such form as the department shall by regulation prescribe certifying that such flour will be:

(a) resold to a distributor, baker, or other processor;

(b) used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this chapter; or

(c) used in the manufacture of products other than flour, white bread, or rolls.

(2) It shall be unlawful for any purchaser so furnishing a certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: **En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).**

50-34-107. Vitamin and mineral content requirements for bread. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls unless the following vitamins and minerals are contained in each pound of such bread or rolls:

(1) not less than 1.1 milligrams and not more than 1.8 milligrams of thiamine;

(2) not less than 0.7 milligrams and not more than 1.6 milligrams of riboflavin;

(3) not less than 10.0 milligrams and not more than 15.0 milligrams of niacin;

(4) not less than 8.0 milligrams and not more than 12.5 milligrams of assimilable iron (Fe).

History: **En. Sec. 3, Ch. 274, L. 1971; R.C.M. 1947, 27-803(part).**

50-34-108. Vitamin and mineral requirements to be uniform with federal standards. (1) The requirements for vitamin and mineral content specified in 50-34-105 and 50-34-107 are identical with those of the federal standards.

(2) When the vitamin and mineral requirements in 50-34-105 and 50-34-107 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods under this

chapter, shall modify or revise the requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under the Federal Food, Drug, and Cosmetic Act of 1938, as amended (Title 21 U.S.C. 301 et seq.).

History: (1)En. Sec. 3, Ch. 274, L. 1971; Sec. 27-803, R.C.M. 1947; (2)En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; Sec. 27-804, R.C.M. 1947; R.C.M. 1947, 27-803(part), 27-804(2).

50-34-109. Modification of vitamin and mineral requirements when ingredients scarce. (1) In the event of findings by the department that there is an existing or imminent shortage of an ingredient required by 50-34-105 or 50-34-107 and that because of this shortage the sale and distribution of flour, white bread, or rolls may be impeded by the enforcement of this chapter, the department shall issue an order, to be effective immediately upon issuance, permitting the omission of the ingredient from flour, white bread, or rolls and, if it finds it necessary or appropriate, excepting the foods from labeling requirements until the further order of the department.

(2) These findings may be made without hearing on the basis of an order or of factual information supplied by the appropriate federal agency or officer.

(3) In the absence of an order of the appropriate federal agency or factual information supplied by it, the department, on receiving the sworn statements of 10 or more persons subject to this chapter that they believe a shortage exists or is imminent, shall within 20 days hold a public hearing at which an interested person may present evidence and shall make findings based on the evidence presented. The department shall publish notice of the hearing at least 10 days before it.

(4) When the department has reason to believe that the shortage no longer exists, it shall hold a public hearing, after at least 10 days' notice has been given, at which an interested person may present evidence, and it shall make findings based on the evidence presented. If it finds that a shortage no longer exists, it shall issue an order effective not less than 30 days after its publication revoking the previous order; however, undisposed stocks of flour on hand at the effective date of the revocation order or flour manufactured before the effective date for sale in this state may thereafter be lawfully sold or disposed of.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(3).

50-34-110. Penalty. A person who violates the provisions of this chapter or the orders or rules promulgated by the department under authority of it shall upon conviction be fined for each offense no more than $100 or be imprisoned for any term not to exceed 30 days.

History: En. Sec. 5, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 4, Ch. 187, L. 1977; R.C.M. 1947, 27-805.

CHAPTER 35

IMPORTED MEATS

Part 1 — General Provisions

Section

50-35-101. Findings and purpose.
50-35-102. Stores to ascertain origin of fresh meat.

50-35-103. Labeling requirement for foreign meat.
50-35-104. Penalty.
50-35-105. Biennial report.

Part 1

General Provisions

50-35-101. Findings and purpose. The legislature finds that sanitary meat inspection standards in other meat producing nations cannot be guaranteed to be equal to the standards applied to the inspection of American meat and declares that the purpose of this chapter is to protect the public health and safety by placing Montana consumers on notice of the possibility of lower inspection standards in such other nations.

History: En. 27-320 by Sec. 3, Ch. 415, L. 1975; R.C.M. 1947, 27-320.

50-35-102. Stores to ascertain origin of fresh meat. Any grocery store or similar establishment selling fresh meat at retail shall, if possible, ascertain the origin of all fresh meat which it offers for sale. Such information shall be provided by the supplier of such meat at the time of delivery if reasonably available to the supplier.

History: En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part).

50-35-103. Labeling requirement for foreign meat. On meat produced outside the United States of America, the store or supplier of fresh meat shall place the words "FOREIGN MEAT" or "MEAT FROM (country of origin)" in prominent letters upon the package in which such meat is sold to the consumer or store. If the country of origin of foreign meat is unknown, the words "COUNTRY OF ORIGIN UNKNOWN" shall be placed upon the package in like manner.

History: En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part); amd. Sec. 1, Ch. 278, L. 1979.

50-35-104. Penalty. A person in charge of a grocery store or similar establishment or a supplier of fresh meat who knowingly fails to comply with the provisions of this chapter by willfully failing to label foreign meat or provide information under the provisions of this chapter commits a misdemeanor and upon conviction shall be fined not less than $200 or more than $500.

History: En. 27-319 by Sec. 2, Ch. 415, L. 1975; R.C.M. 1947, 27-319; amd. Sec. 2, Ch. 278, L. 1979.

50-35-105. Biennial report. The department of health and environmental sciences shall report to the legislature on all efforts taken to enforce compliance with the provisions of this part at the beginning of each regular legislative session.

History: En. Sec. 3, Ch. 278, L. 1979.

CHAPTER 36

MATTRESSES — SHODDY CONTROL

Part 1 — General Provisions

Section
50-36-101. Definitions.
50-36-102. Department authorized to adopt rules.
50-36-103. Inspections authorized.
50-36-104. Label required.
50-36-105. Prohibited acts.
50-36-106. Condemnation of mattresses.
50-36-107. Each mattress in violation a separate offense.

Part 1

General Provisions

50-36-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow filled with any soft material capable of use for sleeping or reclining purposes.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2)En. Sec. 114, Ch. 197, L. 1967; Sec. 69-4701, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4701.

50-36-102. Department authorized to adopt rules. The department may adopt rules and standards for mattress fillings to protect public health.

History: En. Sec. 117, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4704.

50-36-103. Inspections authorized. Officers and employees of the department, local health officials, or officials discharging similar duties may enter establishments where mattresses are manufactured, renovated, or sold and examine the premises or records to determine whether statutes or rules and standards adopted by the department are being violated.

History: En. Sec. 118, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4705.

50-36-104. Label required. A person shall not manufacture or renovate for sale, consignment, or rental a mattress unless it bears a label not smaller than 6 square inches securely attached to the covering which states the name and address of the manufacturer or vendor and type and percent of various materials used in filling. If the mattress contains secondhand material or has been renovated or remade, the label shall contain the words "secondhand material". The labels shall be in the form and contain information as prescribed by the department.

History: En. Sec. 115, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4702.

50-36-105. Prohibited acts. A person shall not:

(1) manufacture or renovate for sale, consignment, or rental a mattress containing material designated as unfit for filling by rules adopted by the department;

(2) manufacture or renovate for sale, consignment, or rental a mattress which contains secondhand materials or materials designated shoddy by the department unless the mattress has been fumigated or sterilized by a process approved by the department;

(3) use in a description for any mattress a term or designation that is likely to mislead;

(4) remove, alter, or deface any label required by 50-36-104.

History: En. Sec. 116, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4703.

50-36-106. Condemnation of mattresses. The department may condemn and seize mattresses found in violation of this chapter or rules or standards adopted by the department. Mattresses seized shall be inspected by the nearest city judge or justice of the peace together with any information obtained. The judge or justice shall dispose of the mattresses or destroy them in the way which will best satisfy the requirements of law.

History: En. Sec. 119, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4706.

50-36-107. Each mattress in violation a separate offense. The unit for a separate and distinct offense in violation of this chapter is each mattress made, remade, renovated, sold, offered for sale, delivered, consigned, rented, or possessed with intent to sell, deliver, consign, or rent.

History: En. Sec. 120, Ch. 197, L. 1967; R.C.M. 1947, 69-4707.

CHAPTER 37

FIREWORKS

Part 1 — General Provisions

Section

50-37-101. Fireworks defined.
50-37-102. Where chapter not to apply.
50-37-103. Unlawful sale, transportation, or use of fireworks.
50-37-104. Lawful sales or uses of fireworks.
50-37-105. Permissible fireworks.
50-37-106. Sale of fireworks restricted to certain dates.
50-37-107. Supervised public display of fireworks authorized.
50-37-108. Damage indemnity bond required for public display.
50-37-109. Confiscation.
50-37-110. Penalties.

Part 1

General Provisions

50-37-101. Fireworks defined. The term "fireworks" means any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and includes sky rockets, roman candles, daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(part).

50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit from any municipality at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

History: (1)En. Sec. 5, Ch. 143, L. 1947; amd. Sec. 3, Ch. 273, L. 1959; Sec. 69-2704, R.C.M. 1947; (2)En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; Sec. 69-2701, R.C.M. 1947; R.C.M. 1947, 69-2701(part), 69-2704; amd. Sec. 16, Ch. 37, L. 1979.

50-37-103. Unlawful sale, transportation, or use of fireworks. (1) It is unlawful to possess, sell, transport, or use any fireworks within the state except as provided in this chapter.

(2) It is unlawful for an individual under the age of 18 to possess for sale, sell, or offer for sale within the state permissible fireworks enumerated in 50-37-105.

(3) It is unlawful for a wholesaler to sell or offer for sale within the state fireworks except as enumerated in 50-37-105. It is lawful for a wholesaler, however, to transport fireworks within Montana for sale outside of the state.

(4) It is unlawful for an individual, firm, partnership, or corporation to discharge or cause to be discharged any pyrotechnics within the exterior boundaries of a state forest, state park, or state recreation area.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(1), (5), (6), (8).

50-37-104. Lawful sales or uses of fireworks. It is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state the permissible fireworks enumerated in 50-37-105.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(3).

50-37-105. Permissible fireworks. Permissible fireworks, excluding sky rockets, roman candles, daygo bombs, firecrackers, and bottle rockets, include and are limited to the following:

(1) helicopter type spinners, the total pyrotechnic composition not to exceed 20 grams each in weight;

(2) cylindrical fountains, the total pyrotechnic composition not to exceed 25 grams each in weight and the inside tube diameter not to exceed three-fourths of an inch;

(3) cone fountains, the total pyrotechnic composition not to exceed 50 grams each in weight;

(4) wheels, the total pyrotechnic composition not to exceed 60 grams in weight for each driver unit (but there may be any number of drivers on any one wheel) and the inside bore of driver tubes not to be over one-half of an inch;

(5) illuminating torches and colored fire in any form, the total pyrotechnic composition not to exceed 100 grams each in weight;

(6) sparklers and dipped sticks, the total pyrotechnic composition not to exceed 100 grams each in weight (pyrotechnic composition containing any chlorate not to exceed 5 grams); and

(7) whistles without report, the total pyrotechnic composition not to exceed 40 grams each in weight.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(4).

50-37-106. Sale of fireworks restricted to certain dates. No person, firm, or corporation may offer fireworks of any kind for sale at retail before June 24 and after July 5.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(7).

50-37-107. Supervised public display of fireworks authorized. (1) The state fire marshal and the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display shall:

(a) be handled by a competent operator, who must be approved by the state fire marshal or the governing body of the municipality in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the chief of the fire department or other officer designated by the governing body of the municipality after proper inspection, not to be hazardous to persons or property.

(3) Application for permits shall be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) No permit granted under this section is transferable.

(6) The term "municipalities" includes cities and incorporated towns.

History: En. Sec. 3, Ch. 143, L. 1947; amd. Sec. 2, Ch. 273, L. 1959; amd. Sec. 18, Ch. 187, L. 1977; R.C.M. 1947, 69-2702.

50-37-108. Damage indemnity bond required for public display. The governing body of the municipality shall require a bond deemed adequate by the municipality from the licensee in a sum not less than $500, conditioned for the payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors.

History: En. Sec. 4, Ch. 143, L. 1947; R.C.M. 1947, 69-2703.

50-37-109. Confiscation. The state fire marshal or any sheriff, police officer, or constable shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

History: En. Sec. 6, Ch. 143, L. 1947; R.C.M. 1947, 69-2705.

50-37-110. Penalties. Any person, firm, partnership, association, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 or more than $500 or, in the case of individuals, the members of a partnership, and the responsible officers and agents of an association or corporation, by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 143, L. 1947; amd. Sec. 4, Ch. 273, L. 1959; R.C.M. 1947, 69-2706.

CHAPTER 38

EXPLOSIVES

Part 1 — General Provisions

Section

50-38-101. Definitions.
50-38-102. Existing ordinances not affected.
50-38-103. General prohibition.
50-38-104. Exception to general prohibition.
50-38-105. Exemptions.
50-38-106. General penalty.
50-38-107. Penalty when death caused by violation of chapter.
50-38-108. Explosives — misrepresentations concerning percentage of nitroglycerine a misdemeanor.

Part 2 — Storage

50-38-201. Who may enter storage area.
50-38-202. When firearms not be to be discharged.
50-38-203. Storage of explosives in mines.

50-38-204. Storage of explosives in cities.
50-38-205. Explosives to be kept in containers.
50-38-206. Explosives to be stored in magazines.
50-38-207. Storage of blasting caps.
Sections 50-38-208 through 50-38-210 reserved.
50-38-211. Explosives to be stored in conformity with quantity and distance table.
50-38-212. Quantity and distance table.
50-38-213. When quantity and distance table may be disregarded.
50-38-214. Reduction of distance.
50-38-215. Maximum allowable for storage.
Sections 50-38-216 through 50-38-220 reserved.
50-38-221. Magazines to be of two classes.
50-38-222. First-class magazines.
50-38-223. Second-class magazines.
Sections 50-38-224 through 50-38-230 reserved.
50-38-231. Report required prior to storing of explosives.
50-38-232. Certificate of compliance to be issued prior to storing of explosives.
50-38-233. Reduction of allowable storage amounts — modification of certificate.
50-38-234. Certificate valid until canceled.
50-38-235. Cancellation of certificate.

Part 3 — Sale and Transportation

50-38-301. Records of transactions required.
50-38-302. Disposing of explosives to minors unlawful.
50-38-303. Transportation of explosives with passengers.
50-38-304. Transportation vehicle to bear warning signs.

Part 1

General Provisions

50-38-101. Definitions. (1) The term "building" or "buildings", as used herein, shall be held to mean and include only a building or buildings occupied in whole or in part as a habitation for human beings or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble.

(2) The term "efficient artificial barricade", as used herein, shall be held to mean an artificial mound or properly riveted wall of earth of a minimum thickness of 3 feet.

(3) The term "explosive" or "explosives", whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

(4) The term "factory building", as used herein, shall be held to mean any building or other structure containing explosives in which the manufacture of explosives or any part of the manufacture is carried on.

(5) The term "highway", as used herein, shall be held to mean and include any public street, public alley, or public road.

(6) The word "magazine", as used herein, means any building or other structure, other than a factory building, used for the storage of explosives.

(7) The term "person", as used herein, shall be held to mean and include firms and corporations as well as natural persons.

(8) The term "railroad", as used herein, shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

(9) Words used in the singular number shall include the plural, and the plural the singular.

History: En. Sec. 1, Ch. 129, L. 1917; re-en. Sec. 2786, R.C.M. 1921; re-en. Sec. 2786, R.C.M. 1935; R.C.M. 1947, 69-1901.

50-38-102. Existing ordinances not affected. Nothing contained in this chapter shall affect any existing ordinance or rule of any city or municipality not less restrictive than this chapter governing the manufacture, storage, and sale of explosives or affect, modify, or limit the power of cities or municipalities in this state to make ordinances or rules not less restrictive than this chapter governing the manufacture, storage, sale, use, or transportation of explosives within their respective corporate limits.

History: En. Sec. 19, Ch. 129, L. 1917; re-en. Sec. 2804, R.C.M. 1921; re-en. Sec. 2804, R.C.M. 1935; R.C.M.1947, 69-1919.

50-38-103. General prohibition. No person shall manufacture, have, keep, or store explosives in this state except in compliance with this chapter.

History: En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-104. Exception to general prohibition. Explosives may be manufactured without compliance with this chapter in the laboratories of schools, colleges, and similar institutions for the purpose of investigation and instruction.

History: En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-105. Exemptions. (1) Nothing contained in this chapter shall apply to the regular military or naval forces of the United States, the duly authorized militia of any state or territory, the police or fire departments of this state or of any municipality or county within this state, providing the same are acting in their official capacity and in the proper performance of their duties.

(2) Nothing contained in this chapter shall apply to explosives while being transported upon vessels or railroad cars in conformity with the regulations adopted by the interstate commerce commission, to transportation or use of blasting explosives for agricultural or prospecting purposes in quantity not exceeding 200 pounds at any one time, to any explosives in quantities not exceeding 5 pounds at any one time, or to any person or persons carrying ammunition in reasonable amounts.

History: En. Sec. 18, Ch. 129, L. 1917; re-en. Sec. 2803, R.C.M. 1921; re-en. Sec. 2803, R.C.M. 1935; R.C.M. 1947, 69-1918.

50-38-106. General penalty. Any person or association of persons violating any of the provisions of this chapter shall be punished by imprisonment in the penitentiary not exceeding 5 years, by fine not exceeding $5,000, or by both such fine and imprisonment.

History: En. Sec. 714, Pen. C. 1895; re-en. Sec. 8552, Rev. C. 1907; re-en. Sec. 2813, R.C.M. 1921; re-en. Sec. 2813, R.C.M. 1935; R.C.M. 1947, 69-1928.

50-38-107. Penalty when death caused by violation of chapter. When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance that has been stored, kept, handled, or transported contrary to the provisions of this chapter, the person or persons who have unlawfully stored, kept, handled, or transported such explosives or who may have knowingly or negligently permitted their agents, servants, or employees to unlawfully store, keep, handle, or transport the same are guilty of negligent homicide and on conviction shall be punished by imprisonment in the state prison for a period not exceeding 10 years.

History: En. Sec. 715, Pen. C. 1895; re-en. Sec. 8553, Rev. C. 1907; re-en. Sec. 2814, R.C.M. 1921; re-en. Sec. 2814, R.C.M. 1935; amd. Sec. 56, Ch. 359, L. 1977; R.C.M. 1947, 69-1929.

50-38-108. Explosives — misrepresentations concerning percentage of nitroglycerine a misdemeanor. Any person or corporation engaged in the business of selling blasting or giant powder, by whatever name the same shall be known, containing nitroglycerine or equivalent explosive compound in any form who shall sell or vend any such blasting powder upon the representation that the same contains a certain percentage or proportion of nitroglycerine or equivalent explosive compound or who, being applied to for blasting powder containing a certain percentage or proportion of nitroglycerine or equivalent explosive compound, shall sell or deliver any such blasting powder containing a less percentage or proportion of nitroglycerine or equivalent explosive compound than represented or than such powder as was applied for shall be deemed guilty of a misdemeanor and, on conviction, shall be punished by a fine of not more than $1,000 or less than $100.

History: En. Sec. 1, Ch. 124, L. 1909; re-en. Sec. 2805, R.C.M. 1921; re-en. Sec. 2805, R.C.M. 1935; R.C.M. 1947, 69-1920.

Part 2

Storage

50-38-201. Who may enter storage area. No person, except an official as authorized herein or a person authorized to do so by the owner or his agent, shall enter any factory building, magazine, or car containing explosives in this state.

History: En. Sec. 12, Ch. 129, L. 1917; re-en. Sec. 2797, R.C.M. 1921; re-en. Sec. 2797, R.C.M. 1935; R.C.M. 1947, 69-1912.

50-38-202. When firearms not to be discharged. No person shall discharge any firearms at or against any magazine or factory building.

History: En. Sec. 14, Ch. 129, L. 1917; re-en. Sec. 2799, R.C.M. 1921; re-en. Sec. 2799, R.C.M. 1935; R.C.M. 1947, 69-1914.

50-38-203. Storage of explosives in mines. No person, company, or corporation shall store, deposit, or keep in any mine a greater quantity than 3,000 pounds of blasting powder, giant or Hercules powder, or other highly explosive substance, and no explosives named in this section shall be stored, deposited, or kept in any place where its accidental explosion would cut off the escape of miners working in said mine.

History: En. Sec. 708, Pen. C. 1895; re-en. Sec. 8546, Rev. C. 1907; re-en. Sec. 2807, R.C.M. 1921; re-en. Sec. 2807, R.C.M. 1935; R.C.M. 1947, 69-1922.

50-38-204. Storage of explosives in cities. (1) No person, company, or corporation may store, deposit, or keep within 1 mile of the limits of a city, town, or village any powder, gunpowder, giant or Hercules powder, or other highly explosive substance in excess of 100 pounds or 1,000 giant caps, nor may explosives be stored, deposited, or kept in any quantity whatever within 1 mile of a city, town, or village except in a magazine constructed as provided for in 50-38-221 through 50-38-223.

(2) This section does not prevent a person, company, or corporation operating a mine within 1 mile of the limits of a city, town, or village from storing powder for use in the mine in the manner prescribed in 50-38-203 and 50-38-221 through 50-38-223.

(3) This section does not prevent the keeping of a reasonable amount of gunpowder, not exceeding 50 pounds, in a safe place for sale.

History: En. Sec. 709, Pen. C. 1895; re-en. Sec. 8547, Rev. C. 1907; re-en. Sec. 2808, R.C.M. 1921; re-en. Sec. 2808, R.C.M. 1935; amd. Sec. 14, Ch. 187, L. 1977; R.C.M. 1947, 69-1923.

50-38-205. Explosives to be kept in containers. (1) Except only at a factory building and except while being used, no person shall have, keep, or store explosives at any place within this state unless such explosives are completely enclosed or encased in tight metallic, wooden, or fiber containers.

(2) No person having explosives in his possession or control shall, under any circumstances, permit or allow any grains or particles to be or remain on the outside or about the containers in which such explosives are held.

(3) All containers in which explosives are held shall be plainly marked with the name of the explosive contained therein.

History: En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-206. Explosives to be stored in magazines. Except while being transported, used, or in the custody of a common carrier awaiting shipment or pending delivery to a consignee during the time permitted by federal law, explosives shall be kept and stored in a magazine constructed and operated as provided in 50-38-221 through 50-38-223.

History: En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-207. Storage of blasting caps. No blasting caps, other detonating or fulminating caps, or detonators shall be kept or stored in any magazines in which other explosives are kept or stored.

History: En. Sec. 8, Ch. 129, L. 1917; re-en. Sec. 2793, R.C.M. 1921; R.C.M. 1947, 69-1908.

50-38-208 through 50-38-210 reserved.

50-38-211. Explosives to be stored in conformity with quantity and distance table. All factory buildings and magazines in which explosives are had, kept, or stored must be located at distances from buildings, railroads, and highways in conformity with the quantity and distance table set out in 50-38-212, and this table shall be the basis on which applications for certificate of compliance, as provided in 50-38-231 through 50-38-235, shall be made and the certificate of compliance issued.

History: En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-212. Quantity and distance table. The quantity and distance table governing the manufacture, keeping, and storage of explosives is as follows:

QUANTITY AND DISTANCE TABLE

Column One				Column Two	Column Three	Column Four
Quantity that may be had, kept or stored				Distance from Nearest Building	Distance from Nearest Railway	Distance from Nearest Highway
Blasting and Electric Blasting Caps		Other Explosives				
Number Over	Number Not Over	Pounds Over	Pounds Not Over	Feet	Feet	Feet
1,000	5,000			30	20	10
5,000	10,000			60	40	20
10,000	20,000			120	70	35
20,000	25,000		50	145	90	45
25,000	50,000	50	100	240	140	70
50,000	100,000	100	200	360	220	110
100,000	150,000	200	300	520	310	150
150,000	200,000	300	400	640	380	190
200,000	250,000	400	500	720	430	220
250,000	300,000	500	600	800	480	240
300,000	350,000	600	700	860	520	260
350,000	400,000	700	800	920	550	280
400,000	450,000	800	900	980	590	300
450,000	500,000	900	1,000	1,020	610	310
500,000	750,000	1,000	1,500	1,060	640	320
750,000	1,000,000	1,500	2,000	1,200	720	360
1,000,000	1,500,000	2,000	3,000	1,300	780	390
1,500,000	2,000,000	3,000	4,000	1,420	850	420
2,000,000	2,500,000	4,000	5,000	1,500	900	450
2,500,000	3,000,000	5,000	6,000	1,560	940	470

Table Continued on Next Page

QUANTITY AND DISTANCE TABLE—(Continued)

Quantity that may be had, kept or stored				Column Two	Column Three	Column Four
Blasting and Electric Blasting Caps		Other Explosives		Distance from Nearest Building	Distance from Nearest Railway	Distance from Nearest Highway
Number Over	Number Not Over	Pounds Over	Pounds Not Over	Feet	Feet	Feet
3,000,000	3,500,000	6,000	7,000	1,610	970	490
3,500,000	4,000,000	7,000	8,000	1,660	1,000	500
4,000,000	4,500,000	8,000	9,000	1,700	1,020	510
4,500,000	5,000,000	9,000	10,000	1,740	1,040	520
5,000,000	7,500,000	10,000	15,000	1,780	1,070	530
7,500,000	10,000,000	15,000	20,000	1,950	1,170	580
10,000,000	12,500,000	20,000	25,000	2,110	1,270	630
12,500,000	15,000,000	25,000	30,000	2,260	1,360	680
15,000,000	17,500,000	30,000	35,000	2,410	1,450	720
17,500,000	20,000,000	35,000	40,000	2,550	1,530	760
		40,000	45,000	2,680	1,610	800
		45,000	50,000	2,800	1,680	840
		50,000	55,000	2,920	1,750	880
		55,000	60,000	3,030	1,820	910
		60,000	65,000	3,130	1,880	940
		65,000	70,000	3,220	1,940	970
		70,000	75,000	3,310	1,990	1,000
		75,000	80,000	3,390	2,040	1,020
		80,000	85,000	3,460	2,080	1,040
		85,000	90,000	3,520	2,120	1,060
		90,000	95,000	3,580	2,150	1,080
		95,000	100,000	3,630	2,180	1,090
		100,000	125,000	3,670	2,200	1,100
		125,000	150,000	3,800	2,280	1,140
		150,000	175,000	3,930	2,360	1,180
		175,000	200,000	4,060	2,440	1,220
		200,000	225,000	4,190	2,520	1,260
		225,000	250,000	4,310	2,590	1,300
		250,000	275,000	4,430	2,660	1,340
		275,000	300,000	4,550	2,730	1,380

History: En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-213. When quantity and distance table may be disregarded. The quantity and distance table may be disregarded and a certificate of compliance issued for two second-class magazines (see 50-38-221 through 50-38-223) in any building not otherwise prohibited by law if the contents and location of the magazine are as follows:

(1) One second-class magazine containing not more than 50 pounds of explosives may be allowed if the said second-class magazine is placed on wheels and located not more than 10 feet from, on the same floor with, and directly opposite to the entrance on the floor nearest the street level.

(2) One second-class magazine containing not more than 5,000 blasting caps may be allowed if the said second-class magazine is placed on wheels and located on the floor nearest the street level.

History: En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-214. Reduction of distance. Whenever the building, railroad, or highway to be protected is effectually screened from the factory building or magazine where explosives are had, kept, or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the top of any side wall of the factory building or magazine to any part of the building to be protected will pass through such intervening natural or efficient artificial barricade and any straight line drawn from the top of any side wall of the factory building or magazine to any point 12 feet above the center of the railroad or highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distances given in columns 2, 3, and 4 of the quantity and distance table may be reduced one-half.

History: En. Sec. 5, Ch. 129, L. 1917; re-en. Sec. 2790, R.C.M. 1921; re-en. Sec. 2790, R.C.M. 1935; R.C.M. 1947, 69-1905.

50-38-215. Maximum allowable for storage. No quantity in excess of 300,000 pounds or, in case of blasting caps, no number in excess of 20 million caps shall be had, kept, or stored in any factory building or magazine in this state.

History: En. Sec. 4, Ch. 129, L. 1917; re-en. Sec. 2789, R.C.M. 1921; re-en. Sec. 2789, R.C.M. 1935; R.C.M. 1947, 69-1904.

50-38-216 through 50-38-220 reserved.

50-38-221. Magazines to be of two classes. Magazines in which explosives may lawfully be kept or stored shall be of two classes, as set out in 50-38-222 and 50-38-223.

History: En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(part).

50-38-222. First-class magazines. (1) Magazines of the first class shall consist of those containing explosives exceeding 50 pounds, shall be constructed of brick, concrete, iron, or wood covered with iron, and shall have no openings except for ventilation and entrance.

(2) The doors of such magazine must at all times be kept closed and locked except when necessarily open for the purpose of storing or removing explosives by persons lawfully entitled to enter the same.

(3) Every such magazine shall have sufficient openings for ventilation, which must be screened in such manner as to prevent the entrance of sparks of fire through the same.

(4) Upon each end of such magazine, above the side walls or upon its barricade, there shall at all times be conspicuously posted a sign with the words "magazine—explosives—dangerous" legibly printed in letters not less than 6 inches high.

(5) No matches or fire of any kind shall at any time be permitted at any such magazine.

(6) No package of explosives shall at any time be opened within 50 feet of any magazine, nor shall any explosives be kept therein except in the original containers.

(7) Magazines in which more than 50 pounds of explosives are kept and stored must be detached from other structures. Magazines where more than 5,000 pounds of explosives are kept and stored must be located at least 200 feet from any other magazine. Magazines where quantities of explosives over 25,000 pounds are kept and stored must have an increase over 200 feet of 2 ⅔ feet for each 1,000 pounds of explosives in excess of 25,000 pounds. Where magazines are protected one from the other by a natural or efficient artificial barricade, the distance above specified may be reduced one-half.

History: En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(a).

50-38-223. Second-class magazines. (1) Magazines of the second class shall be made of fire-proof material or wood covered with sheet iron, and no more than 50 pounds of explosives shall at any time be kept or stored therein and, except when necessarily opened for use by authorized persons, shall at all times be kept securely locked.

(2) Upon each magazine there shall at all times be kept conspicuously posted a sign with the words "magazine—explosives—dangerous" legibly printed, and not more than two such magazines shall be had or kept in any building.

History: En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(b).

50-38-224 through 50-38-230 reserved.

50-38-231. Report required prior to storing of explosives. All persons engaging in keeping or storing explosives after July 1, 1917, shall, before engaging in the keeping or storing of explosives, make a report in writing subscribed to by such persons or their agent to the state fire marshal stating:

(1) the location of the magazine if then existing or, in case of a new magazine, the proposed location of such magazine;

(2) the kind of explosives that are kept or stored or intended to be kept or stored and the maximum quantity that is intended to be kept or stored;

(3) the distance that such magazine is located or intended to be located from the nearest buildings, railroads, and highways.

History: En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-232. Certificate of compliance to be issued prior to storing of explosives. (1) The state fire marshal shall, as soon as may be after receiving such report required by 50-38-231, cause an inspection to be made of the magazine, if then constructed, and in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specifications provided in 50-38-221 through 50-38-223.

(2) The state fire marshal shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance table set forth in 50-38-212 and shall issue a certificate to the person applying therefor showing compliance with the provisions of this chapter, which certificate shall set forth the maximum quantity of explosives that may be had, kept, or stored in said magazine.

History: En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-233. Reduction of allowable storage amounts — modification of certificate. (1) Notwithstanding the certificate of compliance, the amounts of explosives which may be lawfully had, kept, or stored in said factory or magazine must be reduced in accordance with the quantity and distance table to conform to changed conditions such as:

(a) the erection of buildings nearer said magazine;

(b) the construction of railroads nearer said magazine; or

(c) the opening for public travel of highways nearer said magazine.

(2) The state fire marshal shall modify or cancel such certificate in accordance with the changed conditions.

History: En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-234. Certificate valid until canceled. Such certificate of compliance shall be valid until canceled for one or more of the causes hereinafter provided.

History: En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-235. Cancellation of certificate. (1) Whenever any person to whom a certificate of compliance has been issued keeps or stores in the magazine covered by such certificate of compliance any quantity of explosives in excess of the maximum amount set forth in said certificate of compliance or whenever any person fails for 30 days to pay the annual license fee after the same becomes due, the state fire marshal is authorized to cancel such certificate of compliance.

(2) Whenever a certificate of compliance is canceled by the state fire marshal for any cause hereinbefore specified, the state fire marshal shall notify the person to whom such certificate of compliance is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within 10 days from the giving of said notice.

(3) Failure to remove the explosives stored in said magazine within the time specified in said notice shall constitute a violation of this chapter.

History: En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

Part 3

Sale and Transportation

50-38-301. Records of transactions required. (1) Every person, company, or corporation manufacturing, storing, selling, transferring, dealing in, or in any manner disposing of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substances shall keep in a book for that purpose an accurate record of all transactions, with the date thereof, relating to the receiving and disposing of the same.

(2) The record shall show the amount of each such explosive received, by whom transported or conveyed, and each and every sale or other disposition made of such explosive, with the amount thereof and the name of the person to whom delivery of the same was made, who shall be required to receipt therefor.

(3) Such record shall at all times be open to the inspection of the state inspector of mines or any peace officer.

History: En. Sec. 707, Pen. C. 1895; re-en. Sec. 8545, Rev. C. 1907; re-en. Sec. 2806, R.C.M. 1921; re-en. Sec. 2806, R.C.M. 1935; R.C.M. 1947, 69-1921.

50-38-302. Disposing of explosives to minors unlawful. It shall be unlawful to sell, give away, or otherwise dispose of or deliver to any person under 18 years of age any explosives, whether said person is acting for himself or for any other person.

History: En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-303. Transportation of explosives with passengers. (1) It shall be unlawful to knowingly transport, deliver, or cause to be delivered giant or Hercules powder, giant caps, nitroglycerine, nitroleum, blasting or nitrated oil, powder mixed therewith or fiber saturated therewith, or any other highly explosive substance in any quantities whatever on any vessel or vehicle carrying passengers by land or water between any points within the state of Montana.

(2) On mixed trains intended for service on railroad lines leading to mining localities or camps explosive substances may be lawfully carried by hanging a placard on each side of the car or cars carrying the explosives reading: "This car is loaded with powder"—each letter of said placard to be at least 2 inches long, but this proviso shall not permit the carrying of any explosive substances in the same car or coach in which the passengers are carried.

History: En. Sec. 1, p. 246, L. 1897; re-en. Sec. 8550, Rev. C. 1907; re-en. Sec. 2811, R.C.M. 1921; re-en. Sec. 2811, R.C.M. 1935; R.C.M. 1947, 69-1926.

50-38-304. Transportation vehicle to bear warning signs. Each vehicle in which explosives are transported, transferred, or delivered shall bear on each side a sign having the words "explosives—dangerous" in conspicuous letters not less than 2 inches in height.

History: En. Sec. 711, Pen. C. 1895; re-en. Sec. 8549, Rev. C. 1907; re-en. Sec. 2810, R.C.M. 1921; re-en. Sec. 2810, R.C.M. 1935; amd. Sec. 15, Ch. 187, L. 1977; R.C.M. 1947, 69-1925; amd. Sec. 17, Ch. 37, L. 1979.

CHAPTER 39

FIRE PROTECTION EQUIPMENT

Part 1 — Regulation of Sales, Installation, and Servicing

Section

50-39-101. Certificate of registration, permit, and license required.
50-39-102. Application for certificate, permit, and license.
50-39-103. Inspections and examinations authorized.
50-39-104. Revocations and suspensions authorized.
50-39-105. Fees.

Part 2 — Standardization

50-39-201. Fire protection equipment to be equipped with standard thread.
50-39-202. Fire marshal to direct standardization.
50-39-203. Notice of necessary changes — converting equipment.

Part 1

Regulation of Sales, Installation, and Servicing

50-39-101. Certificate of registration, permit, and license required. A natural person must obtain a certificate of registration from the state fire marshal prior to servicing or installing of fire extinguishers, fire alarm systems, or fire extinguishing systems. A person or firm must obtain from the fire marshal a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems prior to engaging in such business.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-102. Application for certificate, permit, and license. (1) Applications for licenses, permits, or certificates shall be made on a form prescribed by the state fire marshal.

(2) The fire marshal shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed and who pays the required fee.

(3) The fire marshal shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the fire marshal and who pays the required fee.

(4) The fire marshal shall issue a sales permit to an applicant who submits the information required by the fire marshal on the application form,

who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the state fire marshal, and who pays the required fee.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(a).

50-39-103. Inspections and examinations authorized. The state fire marshal may conduct inspections, examinations, or hearings prior to the issuance of licenses, permits, or certificates.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-104. Revocations and suspensions authorized. The state fire marshal may revoke, suspend, or refuse to issue a license, permit, or certificate for violation of the provisions of this part or any rules promulgated by the fire marshal under applicable law.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part).

50-39-105. Fees. (1) The state fire marshal or his representative shall charge a fee, not to exceed a total of $25, for the inspection and issuance of licenses, permits, and certificates.

(2) All fees collected under this section shall be paid into the general fund.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(c), (4)(d).

Part 2

Standardization

50-39-201. Fire protection equipment to be equipped with standard thread. Hereafter, all equipment for fire protection purposes purchased by state and municipal authorities or any other authorities having charge of public property shall be equipped with the standard thread for fire hose couplings and hydrant fittings designated as the national standard as adopted by the national board of fire underwriters, which standard is hereby designated as the standard for such equipment in the state.

History: En. Sec. 1, Ch. 53, L. 1929; re-en. Sec. 2762.1, R.C.M. 1935; R.C.M. 1947, 82-1233.

50-39-202. Fire marshal to direct standardization. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the state fire marshal of Montana. The state fire marshal is authorized to proceed to make such changes as may be necessary to standardize all existing fire protection equipment in this state immediately after March 1, 1929. He shall provide such appliances as are necessary for carrying on this work and shall proceed with such standardization as rapidly as possible and complete such work at the earliest date circumstances will permit.

History: En. Sec. 2, Ch. 53, L. 1929; re-en. Sec. 2762.2, R.C.M. 1935; R.C.M. 1947, 82-1234.

50-39-203. Notice of necessary changes — converting equipment. The state fire marshal shall notify industrial establishments and property owners having equipment for fire protection purposes which it may be necessary for a fire department to use in protecting the property or putting out fire of the changes necessary to bring their equipment up to the requirements of the standard hereby established and shall render them such assistance as may be available in converting their equipment to standard requirements.

History: **En. Sec. 3, Ch. 53, L. 1929; re-en. 2762.3, R.C.M. 1935; R.C.M. 1947, 82-1235.**

CHAPTER 40

SMOKING IN PUBLIC PLACES

Part 1 — Montana Clean Indoor Air Act

Section

50-40-101. Short title.
50-40-102. Purpose.
50-40-103. Definitions.
50-40-104. Designation or reservation of smoking or nonsmoking areas — notice.
50-40-105. No smoking signs in certain places.
50-40-106. Requirements of health care facilities.
50-40-107. Exemptions.
50-40-108. Enforcement.

Part 1

Montana Clean Indoor Air Act

50-40-101. Short title. This part may be cited as the "Montana Clean Indoor Air Act of 1979".

History: **En. Sec. 1, Ch. 368, L. 1979.**

Compiler's Comments

Severability. Sec. 9, Ch. 368, L. 1979, was a severability section.

50-40-102. Purpose. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.

History: **En. Sec. 2, Ch. 368, L. 1979.**

50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(5) "Working area" means an enclosed room where more than one employee works.

History: En. Sec. 3, Ch. 368, L. 1979.

50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) Except for those enclosed public places provided for in 50-40-105, the proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs; or

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area; or

(c) designate the entire area as a smoking area.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

History: En. Sec. 4, Ch. 368, L. 1979.

50-40-105. No smoking signs in certain places. No smoking signs shall be conspicuously posted in elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.

History: En. Sec. 5, Ch. 368, L. 1979.

50-40-106. Requirements of health care facilities. (1) Health care facilities shall:

(a) ask all in-patients, prior to admission, to designate their preference for a nonsmoking or smoking patient room and, when possible, accommodate such a preference;

(b) prohibit smoking in all kitchens, laboratories, and corridors;

(c) prohibit smoking in storage areas for supplies or materials and wherever flammable liquids, gases, or oxygen is stored or in use;

(d) provide a nonsmoking area in all waiting rooms;

(e) prohibit employees from smoking in patient rooms; and

(f) require visitors to obtain express approval from all patients in the patient room, or from the patients' physicians, prior to smoking.

(2) Nothing in this section shall prohibit a health care facility from banning smoking on all or a part of its premises.

(3) All areas of a health care facility not specifically referred to in this section may be considered smoking areas unless posted otherwise.

History: En. Sec. 6, Ch. 368, L. 1979.

50-40-107. Exemptions. The following shall be exempt from this part:

(a) restrooms;

(b) taverns or bars where meals are not served;

(c) vehicles or rooms seating six or fewer members of the public.
History: **En. Sec. 7, Ch. 368, L. 1979.**

50-40-108. Enforcement. The provisions of this part shall be supervised and enforced by the local boards of health under the direction of the department.
History: **En. Sec. 8, Ch. 368, L. 1979.**

CHAPTER 41

LAETRILE

Part 1 — General Provisions

Section
50-41-101. Laetrile defined.
50-41-102. Laetrile authorized.
50-41-103. Hospital may not interfere.
50-41-104. Health care facility liability.
50-41-105. Physician not subject to disciplinary action.
50-41-106. Laetrile not endorsed — permitted as a dietary supplement.
50-41-107. Laetrile optional.

Part 1

General Provisions

50-41-101. Laetrile defined. As used in this chapter, "laetrile", also known as B-17, means a cyanogenetic glycoside, which is processed from the seeds of certain fruits, including apricots, peaches, and plums.
History: **En. Sec. 1, Ch. 454, L. 1979.**

50-41-102. Laetrile authorized. The manufacture, sale, possession, and distribution of laetrile is lawful within this state.
History: **En. Sec. 2, Ch. 454, L. 1979.**

Compiler's Comments
Effective date. Sec. 8, Ch. 454, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

50-41-103. Hospital may not interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of laetrile when prescribed or administered by a physician and requested by a patient.
History: **En. Sec. 3, Ch. 454, L. 1979.**

50-41-104. Health care facility liability. No hospital, health care facility, or employee thereof shall be held liable for the administration of laetrile to any person at the direction of a licensed physician.
History: **En. Sec. 4, Ch. 454, L. 1979.**

50-41-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: **En. Sec. 5, Ch. 454, L. 1979.**

50-41-106. Laetrile not endorsed — permitted as a dietary supplement. This chapter:

(1) is not an endorsement of laetrile for the treatment of any malignancy, disease, illness, or physical condition;

(2) does not prevent a physician from prescribing laetrile as a dietary supplement to a patient not suffering from any known malignancy, disease, illness, or physical condition.

History: **En. Sec. 6, Ch. 454, L. 1979.**

50-41-107. Laetrile optional. This chapter does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute laetrile;

(2) a physician to prescribe laetrile for any patient.

History: **En. Sec. 7, Ch. 454, L. 1979.**

CHAPTERS 42 THROUGH 49

RESERVED

CHAPTER 50

FOOD ESTABLISHMENTS

Part 1 — General Provisions

Section
50-50-101. Purpose of regulation.
50-50-102. Definitions.
50-50-103. Department authorized to adopt rules.
50-50-104. Cooperative agreements authorized.
50-50-105. Diseased person not to handle food.
50-50-106. Injunctions.
50-50-107. County attorney to prosecute violations.
50-50-108. Violation of chapter a misdemeanor.

Part 2 — Licensing

50-50-201. License required.
50-50-202. Publicly owned establishment exempt from license requirement.
50-50-203. Application for license.
50-50-204. Right to license.
50-50-205. License fee.
50-50-206. License not transferable.
50-50-207. Expiration date of license.
50-50-208. Local board to report number of licensees to department.
50-50-209. Cancellation of license.
50-50-210. Submission of plan of correction as bar to cancellation.

50-50-211. Notice and hearing required.
50-50-212. Cancellation of license for multiple-type establishment.
50-50-213. Return of license for alteration or destruction.
50-50-214. Notification of and validation by local health officer.
50-50-215. Refusal by local health officer — appeal to board.

Part 3 — Inspections

50-50-301. Health officers to investigate and make inspections.
50-50-302. Health officers to have free access.
50-50-303. Licensee to furnish food samples.
50-50-304. Discovery of food capable of causing food-borne illness.
50-50-305. Department to pay local board for inspections.

Part 4 — Frozen Food Lockers

50-50-401. Tagging or declaration requirements for stored meat.
50-50-402. Plant owner not responsible for violation of game laws.
50-50-403. Liability of frozen food plant operators restricted.

Part 1

General Provisions

50-50-101. Purpose of regulation. Regulation of establishments defined in 50-50-102 is required to prevent and eliminate conditions and practices which endanger public health.

History: En. Sec. 1, Ch. 17, L. 1967; R.C.M. 1947, 27-611.

50-50-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer.

(4) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(5) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(6) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not

include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(7) "Frozen food plant" means a place used to freeze, process, or store food including facilities used in conjunction with the frozen food plant and a place where individual compartments are offered to the public on a rental or other basis.

(8) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(9) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

(10) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

History: En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971; amd. Sec. 1, Ch. 349, L. 1974; R.C.M. 1947, 27-612.

50-50-103. Department authorized to adopt rules. To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

History: En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).

50-50-104. Cooperative agreements authorized. The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of this chapter.

History: En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).

50-50-105. Diseased person not to handle food. A person who has a communicable disease may not work in any establishment or in the handling or processing of food.

History: En. Sec. 9, Ch. 17, L. 1967; R.C.M. 1947, 27-619.

50-50-106. Injunctions. Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian may bring an action for an injunction against the continuation of an alleged violation of this chapter.

History: En. 27-615.2 by Sec. 3, Ch. 508, L. 1975; R.C.M. 1947, 27-615.2.

50-50-107. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(5).

50-50-108. Violation of chapter a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, he shall be:

(1) fined not less than $50 or more than $100 for the first offense;

(2) fined not less than $75 or more than $200 for the second offense;

(3) fined not less than $200 and imprisoned in the county jail for not more than 90 days for the third and subsequent offenses.

History: En. Sec. 15, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-625.

Part 2

Licensing

50-50-201. License required. (1) A person operating an establishment shall procure an annual license from the department.

(2) A separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one license is required for a person owning and operating one or more vending machines.

(4) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(1) thru (3); amd. Sec. 2, Ch. 200, L. 1979.

50-50-202. Publicly owned establishment exempt from license requirement. Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(6).

50-50-203. Application for license. An application for a license is made to the department on forms and contains information required by the department.

History: En. Sec. 4, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(1).

50-50-204. Right to license. Licenses shall be granted as a matter of right unless grounds for denial or cancellation exist.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(7).

50-50-205. License fee. For each license issued, the department shall collect a fee of $20. It shall deposit receipts in the state general fund.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(2).

50-50-206. License not transferable. Licenses are not transferable or applicable to any premises other than that for which the license was issued.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(5).

50-50-207. Expiration date of license. Licenses expire on December 31 following the date of issue unless canceled for cause.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(4).

50-50-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed under this chapter.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part).

50-50-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(2).

50-50-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department. A multiple-type establishment includes an establishment authorized by 50-50-201(2).

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(3).

50-50-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(4).

50-50-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: **En. Sec. 5, Ch. 200, L. 1979.**

Compiler's Comments

Codification. Sec. 8, Ch. 200, L. 1979, provided: "Sections 5 and 6 are intended to be codified as an integral part of Title 50 and the provisions contained in Title 50 apply to sections 5 and 6."

50-50-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 6, Ch. 200, L. 1979.**

Part 3

Inspections

50-50-301. Health officers to investigate and make inspections. State and local health officers, sanitarians, or other authorized persons shall make investigations and inspections of establishments and make reports to the department as required by rules adopted by the department.

History: **En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(1).**

50-50-302. Health officers to have free access. State and local health officers, sanitarians, and other authorized persons shall have free access to establishments at all reasonable hours.

History: **En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(2).**

50-50-303. Licensee to furnish food samples. Persons licensed under part 2 shall furnish food samples for analysis as required by rules adopted by the department.

History: **En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(3).**

50-50-304. Discovery of food capable of causing food-borne illness. If a state or local health officer, sanitarian, or other authorized person finds food that is capable of causing food-borne illness, he shall issue a report in writing recommending that the food be withheld from sale to the public. A duplicate copy of the report, properly authenticated, is admissible in evidence in any action or proceeding where the condition of the food at the time of the inspection is material.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(4).

50-50-305. Department to pay local board for inspections. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part).

Part 4

Frozen Food Lockers

50-50-401. Tagging or declaration requirements for stored meat. (1) The owner or operator of an establishment, as defined in this chapter, shall not receive the carcass of a game animal, game bird, or any quarter, half, or whole carcass of beef or veal unless:

(a) it is properly stamped or tagged; or

(b) a written declaration is filed by the owner stating how it was obtained, date placed in the locker, and weight and type of meat.

(2) A declaration made under subsection (1)(b) of this section shall be retained for 1 year and shall be open to inspection by employees of the department.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

50-50-402. Plant owner not responsible for violation of game laws. A person who owns or operates a frozen food plant which offers individual compartments to the public is not responsible for violation of game laws by persons who rent locker space from him.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

50-50-403. Liability of frozen food plant operators restricted. The liability for loss of food by the owner or operator of a frozen food plant which offers individual compartments to the public is limited to negligence in operation or negligence of his employees.

History: En. Sec. 12, Ch. 17, L. 1967; R.C.M. 1947, 27-622.

CHAPTER 51

HOTELS, MOTELS, AND ROOMINGHOUSES

Part 1 — General Provisions

Section
50-51-101. Purpose of regulation.
50-51-102. Definitions.
50-51-103. Department authorized to adopt rules.
50-51-104. Cooperative agreements authorized.
50-51-105. County attorney to prosecute violations.
50-51-106. Violation of chapter a misdemeanor.
50-51-107. Provision of full-time nursing services prohibited.

Part 2 — Licensing

50-51-201. License required.
50-51-202. Application for license.
50-51-203. Right to renewal.
50-51-204. License fee.
50-51-205. License fee to supersede other fees.
50-51-206. License not transferable.
50-51-207. Expiration date of license.
50-51-208. Local board to report number of licensees to department.
50-51-209. Cancellation of license.
50-51-210. Submission of plan of correction as bar to cancellation.
50-51-211. Notice and hearing required.
50-51-212. Cancellation of license for multiple-type establishment.
50-51-213. Return of license for alteration or destruction.
50-51-214. Notification of and validation by local health officer.
50-51-215. Refusal by local health officer — appeal to board.

Part 3 — Inspections

50-51-301. Health officers to investigate and make inspections.
50-51-302. Health officers to have free access.
50-51-303. Department to pay local board for inspections.

Part 1

General Provisions

50-51-101. Purpose of regulation. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations, as defined in 50-51-102 hereof, and the control, inspection, and regulation of persons engaged therein in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing lodging space accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973; R.C.M. 1947, 34-301.

50-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means board of health and environmental sciences.

(2) "Department" means the department of health and environmental sciences.

(3) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(4) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, retirement home, or roominghouse.

(5) "Roominghouse" or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing services on a full-time basis.

(6) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(7) "Transient guest" means a guest for only a brief stay, such as the traveling public.

History: En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973; amd. Sec. 1, Ch. 325, L. 1977; R.C.M. 1947, 34-302.

50-51-103. Department authorized to adopt rules. The department may adopt and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(a).

50-51-104. Cooperative agreements authorized. The department is hereby authorized to enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this chapter or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(b).

50-51-105. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(5).

50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense and for the third and subsequent offenses not less than $200 and by imprisonment in the county jail not to exceed 90 days.

History: En. Sec. 9, Ch. 18, L. 1967; R.C.M. 1947, 34-309; amd. Sec. 18, Ch. 37, L. 1979.

50-51-107. Provision of full-time nursing services prohibited. (1) Hotels, motels, boardinghouses, roominghouses, or similar accommodations may not provide professional nursing services to residents on a full-time basis.

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide such service, the department shall investigate and provide for appropriate placement of such person if it is found that professional nursing services are needed.

History: En. 34-311, 34-312 by Secs. 2, 3, Ch. 325, L. 1977; R.C.M. 1947, 34-311, 34-312.

Part 2

Licensing

50-51-201. License required. (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, retirement home, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed.

(3) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 3, Ch. 200, L. 1979.

50-51-202. Application for license. Application for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 19, Ch. 37, L. 1979.

50-51-203. Right to renewal. (1) Existing licenses shall be renewed as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

(2) Renewal may be obtained annually by paying the required annual license fee.

History: (1)En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; Sec. 34-303, R.C.M. 1947; (2)En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; Sec. 34-304, R.C.M. 1947; R.C.M. 1947, 34-303(part), 34-304(part).

50-51-204. License fee. There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of $20. These fees shall be deposited with the state treasury to the credit of the general fund.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(a).

50-51-205. License fee to supersede other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this chapter.

History: En. Sec. 10, Ch. 18, L. 1967; R.C.M. 1947, 34-310.

50-51-206. License not transferable. Such license shall not be transferable or be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-207. Expiration date of license. Each license shall expire on December 31 following its date of issue unless canceled for cause.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed pursuant to this part.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).

50-51-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).

50-51-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the board for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(2).

50-51-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department (a multiple-type establishment includes two or more of the following: hotel, motel, or tourist home).

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(3).

50-51-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(4).

50-51-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979.

Compiler's Comments

Codification. Sec. 8, Ch. 200, L. 1979, provided: "Sections 5 and 6 are intended to be codified as an integral part of Title 50 and the provisions contained in Title 50 apply to sections 5 and 6."

50-51-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Part 3

Inspections

50-51-301. Health officers to investigate and make inspections. (1) The department, through its employees and through local, county, and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this chapter.

(2) Each local, county, or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules of the department may direct and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the department may direct.

History: **En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(a).**

50-51-302. Health officers to have free access. All persons authorized by this chapter or by regulations adopted under this chapter shall have free access at all reasonable hours to any of the establishments listed and defined in 50-51-102 for the purpose of making inspections.

History: **En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(b).**

50-51-303. Department to pay local board for inspections. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: **En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).**

CHAPTER 52

TOURIST CAMPGROUNDS AND TRAILER COURTS

Part 1 — General Provisions

Section

50-52-101. Definitions.
50-52-102. Department to adopt rules.
50-52-103. Duty to obtain license and permit inspections.
50-52-104. County attorney to prosecute violations.
50-52-105. Violation of chapter a misdemeanor.

Part 2 — Licensing

50-52-201. Application for license.
50-52-202. License fee.
50-52-203. Expiration date of license.
50-52-204. Local board to report number of licensees to department.
50-52-205. Cancellation of license.
50-52-206. Submission of plan of correction as bar to cancellation.
50-52-207. Notice and hearing required.
50-52-208. Notification of and validation by local health officer.

50-52-209. Refusal by local health officer — appeal to board.

Part 3 — Inspections

50-52-301. Health officers to make inspections.
50-52-302. Department to pay local board for inspection.

Part 1

General Provisions

50-52-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means the department of health and environmental sciences.

(3) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating or owning or offering the services of a tourist campground or trailer court.

(4) "Tourist campground" means a place used for public camping primarily by automobile tourists where persons can camp or secure tents or park individual trailers or truck trailers for camping and sleeping purposes.

(5) "Trailer court" means a parcel of land offered to the public and usually designated a trailer court, trailer park, or mobile home park upon which two or more spaces are occupied or intended for occupancy by trailers or mobile homes for nonrecreational dwelling purposes.

History: **En. Sec. 212, Ch. 197, L. 1967; amd. Sec. 1, Ch. 383, L. 1973; R.C.M. 1947, 69-5601.**

50-52-102. Department to adopt rules. The department shall adopt rules for constructing and operating tourist campgrounds and trailer courts to insure sanitation and protect public health.

History: **En. Sec. 213, Ch. 197, L. 1967; amd. Sec. 2, Ch. 383, L. 1973; amd. Sec. 13, Ch. 140, L. 1977; R.C.M. 1947, 69-5602.**

50-52-103. Duty to obtain license and permit inspections. A person operating a tourist campground or trailer court shall:

(1) obtain a license from the department;

(2) permit inspections by state or local health officers, sanitarians, or other authorized persons at all reasonable times.

History: **En. Sec. 214, Ch. 197, L. 1967; amd. Sec. 3, Ch. 383, L. 1973; amd. Sec. 14, Ch. 140, L. 1977; R.C.M. 1947, 69-5603.**

50-52-104. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(3).**

50-52-105. Violation of chapter a misdemeanor. (1) A person violating a provision of this chapter or a rule made under it shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense, and for the third and subsequent offenses, he shall be punished by a fine of not less than $200 and imprisonment in the county jail not to exceed 90 days.

(2) Fines shall be paid to the county treasurer of the county in which the tourist campground or trailer court is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973; amd. Sec. 3, Ch. 506, L. 1975; amd. Sec. 15, Ch. 140, L. 1977; R.C.M. 1947, 69-5607.

Part 2

Licensing

50-52-201. Application for license. (1) Application for a license is made to the department on forms containing information required by the department.

(2) The department may not issue a license unless it has been validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 4, Ch. 200, L. 1979.

50-52-202. License fee. (1) Each application shall be accompanied by a fee of $20.

(2) Fees collected by the department shall be deposited in the state general fund.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

50-52-203. Expiration date of license. Licenses expire on December 31 of the year in which they are issued.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

50-52-204. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction which are licensed under this part.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

50-52-205. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).

50-52-206. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).**

50-52-207. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In this case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: **En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(2).**

50-52-208. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: **En. Sec. 5, Ch. 200, L. 1979.**

Compiler's Comments

Codification. Sec. 8, Ch. 200, L. 1979, provided: "Sections 5 and 6 are intended to be codified as an integral part of Title 50 and the provisions contained in Title 50 apply to sections 5 and 6."

50-52-209. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 6, Ch. 200, L. 1979.**

Part 3

Inspections

50-52-301. Health officers to make inspections. The department or local health officer or sanitarian shall:

(1) inspect tourist campgrounds and trailer courts during reasonable hours as necessary;

(2) supervise the inspection of tourist campgrounds or trailer courts by local health officers, sanitarians, or other authorized persons as necessary.

History: **En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973; R.C.M. 1947, 69-5605.**

50-52-302. Department to pay local board for inspection. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114.

History: **En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).**

CHAPTER 53

PUBLIC SWIMMING POOLS AND SWIMMING AREAS

Part 1 — General Provisions

Section
50-53-101. Purpose of regulation.
50-53-102. Definitions.
50-53-103. Duties of department.
50-53-104. Powers of health officers.
50-53-105. Publication of inspection reports.
50-53-106. Duties of pool operators.
50-53-107. Pool operation to be sanitary, healthful, and safe.
50-53-108. Unauthorized construction or operation a public nuisance.
50-53-109. Violation of chapter a misdemeanor.

Part 1

General Provisions

50-53-101. Purpose of regulation. It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health.

History: **En. Sec. 201, Ch. 197, L. 1967; R.C.M. 1947, 69-5501.**

50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(4) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(5) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; or

(b) medicinal hot water baths for individual use.

History: Ap. p. Sec. 202, Ch. 197, L. 1967; amd. Sec. 24, Ch. 187, L. 1977; Sec. 69-5502, R.C.M. 1947; (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; R.C.M. 1947, 69-4102(1), (2), 69-5502.

50-53-103. Duties of department. (1) The department shall adopt rules for sanitation in public swimming pools and public bathing places to protect public health.

(2) The department shall supervise the sanitation of public swimming pools and public bathing places.

History: En. Secs. 203, 204, Ch. 197, L. 1967; amd. Secs. 104, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5503, 69-5504.

50-53-104. Powers of health officers. Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places to determine if provisions of this chapter and rules of the department are being violated;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the department;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) enforce rules adopted by the department.

History: En. Sec. 205, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5505.

50-53-105. Publication of inspection reports. The department may publish reports of inspections authorized by 50-53-104(1).

History: En. Sec. 206, Ch. 197, L. 1967; R.C.M. 1947, 69-5506.

50-53-106. Duties of pool operators. Each person operating a public swimming pool or public bathing place shall:

(1) operate the pool or public bathing place in a sanitary and safe manner;

(2) keep records of public health and safety information required by the department;

(3) furnish information to the department on forms prescribed by it.

History: En. Sec. 208, Ch. 197, L. 1967; R.C.M. 1947, 69-5508.

50-53-107. Pool operation to be sanitary, healthful, and safe. Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

History: **En. Sec. 209, Ch. 197, L. 1967; R.C.M. 1947, 69-5509.**

50-53-108. Unauthorized construction or operation a public nuisance. The construction or operation of a public swimming pool or public bathing place contrary to the provisions of this chapter or rules adopted by the department under the provisions of this chapter is a public nuisance and dangerous to public health.

History: **En. Sec. 210, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5510.**

50-53-109. Violation of chapter a misdemeanor. A person who violates this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $25 or more than $500, imprisonment for not more than 6 months, or both. Each day that a violation continues is a separate violation.

History: **En. Sec. 211, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5511.**

CHAPTERS 54 THROUGH 59

RESERVED

CHAPTER 60

BUILDING CONSTRUCTION STANDARDS

Part 1 — General Provisions

Section

50-60-101. Definitions.
50-60-102. Applicability.
50-60-103. Administration by department.
50-60-104. Inspection fees.
50-60-105. Hearings authorized.
50-60-106. Powers and duties of municipalities.
50-60-107. Certificate of occupancy.
50-60-108. Construction permit required.
50-60-109. Injunctions authorized.
50-60-110. Violation a misdemeanor.

Part 2 — State Building Code

50-60-201. Purpose of state building code.
50-60-202. Department to be sole state agency to promulgate building regulations.
50-60-203. Department to adopt state building code by rule.
50-60-204. Public hearing required.
50-60-205. When state building code applies.
50-60-206. Variances to state building code.

Part 3 — Municipal and County Building Codes

50-60-301. Municipal and county building codes authorized.

50-60-302. Certification of municipal and county building codes.
50-60-303. Municipal appeal procedure.

Part 4 — Factory-Built Buildings and Recreational Vehicles

50-60-401. Department to adopt rules for mobile homes and recreational vehicles.
50-60-402. Mobile homes and recreational vehicles to comply with standards.
50-60-403. Use of independent testing laboratories authorized.
50-60-404. Enforcement of building construction standards for modular homes.

Part 5 — Plumbing Installations

50-60-501. Declaration of public interest.
50-60-502. No penalties for hiring unlicensed plumbers.
50-60-503. Exceptions.
50-60-504. Department to prescribe minimum standards.
50-60-505. Permit required.
50-60-506. Exceptions to permit requirement.
50-60-507. Application for and issuance of permit.
50-60-508. Permit fees.
50-60-509. Person commencing work without a permit to pay double the permit fee — exception.
50-60-510. Inspection by department to insure compliance.
50-60-511. Duty of permittee regarding inspection and compliance.
50-60-512. Department authorized to order work stopped for noncompliance.
50-60-513. Suspension or revocation of permit.
50-60-514. District court — jurisdiction — restraining orders.
50-60-515. Penalty for violations — exceptions.

Part 6 — Electrical Installations

50-60-601. Purpose.
50-60-602. Exceptions.
50-60-603. Electrical installations to comply with building codes adopted by department.
50-60-604. Department to make inspections, issue inspection tags, and establish fees.
50-60-605. Power supplier not to energize installation without inspection tag.
50-60-606. Power supplier to deliver inspection tag to department after installation energized.
50-60-607. Unlawful acts.

Part 7 — Elevators

50-60-701. Inspection of passenger elevators and escalators — fees.
50-60-702. Department to adopt inspection standards — certification of inspectors.
50-60-703. When inspection of elevators not necessary.

Part 1

General Provisions

50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(7) "Local legislative body" means the council or commission charged with governing the municipality.

(8) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (9) of this section.

(9) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the council may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(10) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(11) "Public place" means any place which a municipality or state maintains for the use of the public or a place where the public has the right to go and be.

(12) "Recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 50-60-401.

(13) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(14) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments.

History: En. Sec. 2, Ch. 366, L. 1969; amd. Sec. 1, Ch. 226, L. 1974; amd. Sec. 1, Ch. 244, L. 1975; amd. Sec. 1, Ch. 459, L. 1975; amd. Sec. 1, Ch. 504, L. 1977; R.C.M. 1947, 69-2105; amd. Sec. 1, Ch. 315, L. 1979.

50-60-102. Applicability. (1) Outside municipalities and their jurisdictional area, as defined by 50-60-101(9), parts 1 through 4 apply to "public places", as defined in 50-60-101(11).

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(3) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable.

History: En. Sec. 4, Ch. 366, L. 1969; amd. Sec. 2, Ch. 226, L. 1974; R.C.M. 1947, 69-2107.

50-60-103. Administration by department. The department shall administer parts 1 through 4 and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of parts 1 through 4 and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of such acceptability;

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and cooperate with other agencies of the state, local governments, industries, and interested persons or groups.

History: En. Sec. 6, Ch. 366, L. 1969; amd. Sec. 3, Ch. 226, L. 1974; R.C.M. 1947, 69-2109.

50-60-104. Inspection fees. The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, recreational vehicles, tramways, or any other facility or structure.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part).

50-60-105. Hearings authorized. The department may hold hearings relating to the administration of parts 1 through 4 in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(2).

50-60-106. Powers and duties of municipalities. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area shall be the responsibility of the municipalities of the state.

(2) Each municipality may:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the department;

(c) order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state or municipal building code; orders may be served upon the owner or his authorized agent personally or by sending by registered or certified mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building; any local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order;

(d) issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required;

(e) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations;

(f) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code.

History: En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).

50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state or municipal building code shall certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all municipal agencies as to all matters set forth, and no order, directive, or

requirement at variance therewith may be made or issued by any other state or municipal agency.

History: En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).

50-60-108. Construction permit required. Any person who desires to construct a building which is subject to the provisions of parts 1 through 4 must apply for a permit from the appropriate authorities.

History: En. Sec. 10, Ch. 366, L. 1969; amd. Sec. 6, Ch. 226, L. 1974; R.C.M. 1947, 69-2113.

50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section will be governed by the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 366, L. 1969; R.C.M. 1947, 69-2118.

50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

History: En. Sec. 16, Ch. 366, L. 1969; amd. Sec. 8, Ch. 226, L. 1974; R.C.M. 1947, 69-2119.

Part 2

State Building Code

50-60-201. Purpose of state building code. The state building code shall be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consonant with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted

preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that buildings constructed with public funds are accessible to and functional for physically handicapped persons where practicable and feasible;

(5) encourage efficiencies of design and insulation which enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of such equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems which promote the efficient use of energy.

History: En. Sec. 7, Ch. 366, L. 1969; amd. Sec. 4, Ch. 226, L. 1974; amd. Sec. 1, Ch. 116, L. 1975; R.C.M. 1947, 69-2110.

50-60-202. Department to be sole state agency to promulgate building regulations. No state agency except the department may promulgate building regulations as defined in 50-60-101, except the state fire marshal may promulgate regulations relating to use of buildings and installation of equipment. The state fire marshal shall review building plans and regulations for conformity with rules promulgated by the department.

History: En. 69-2125 by Sec. 13, Ch. 504, L. 1977; R.C.M. 1947, 69-2125.

50-60-203. Department to adopt state building code by rule. (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal such rules.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part).

50-60-204. Public hearing required. (1) Except as provided in subsection (2) of this section, no rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

(2) If a hearing has been held by the state fire marshal with respect to his duties contained in chapter 3 of this title or by the board of plumbers, the department of health and environmental sciences, the board of warm air heating, ventilation, and air conditioning, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part); amd. Sec. 17, Ch. 546, L. 1979.

50-60-205. When state building code applies. If a municipality or county does not adopt a building code as provided in 50-60-301, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(2).

50-60-206. Variances to state building code. (1) The department has the power, on satisfactory proof after a public hearing, to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security, and equally safe and proper alternatives may be prescribed therefor;

(b) reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review within 30 days after disapproval any application for permission for the construction of a building pursuant to the provisions of the state building code or plans or specifications submitted in connection therewith;

(d) reverse, modify, or annul the disapproval in whole or part;

(e) within 30 days make a determination that the application or plans or specifications are in compliance with the provisions of the state building code. If this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act.

(3) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(4) The department, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence.

History: En. Sec. 11, Ch. 366, L. 1969; amd. Sec. 7, Ch. 226, L. 1974; R.C.M. 1947, 69-2114.

Part 3

Municipal and County Building Codes

50-60-301. Municipal and county building codes authorized. (1) The local legislative body of a municipality or county may adopt a building code by ordinance to apply to the municipal or county jurisdictional area.

(2) A municipal or county building code may include only codes adopted by the department.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(1).

50-60-302. Certification of municipal and county building codes. (1) A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.

(2) The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (1).

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(3), (4).

50-60-303. Municipal appeal procedure. (1) If a municipality adopts a municipal building code, it shall also establish an appeal procedure by ordinance which is acceptable to the department.

(2) If a municipality does not adopt a code, appeals on the application of the state building code within the municipal jurisdictional area shall be made to the department.

History: En. Sec. 13, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2116.

Part 4

Factory-Built Buildings and Recreational Vehicles

50-60-401. Department to adopt rules for mobile homes and recreational vehicles. The department shall make rules embodying the fundamental principles adopted, recommended, or issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America standards institute (USASI), successor to the American standards association (ASA), and American national standards applicable to mobile homes and recreational vehicles as defined in 50-60-101.

History: En. Sec. 2, Ch. 348, L. 1971; amd. Sec. 9, Ch. 226, L. 1974; R.C.M. 1947, 69-2122.

50-60-402. Mobile homes and recreational vehicles to comply with standards. (1) No person, firm, or corporation may manufacture, sell, or offer for sale any new mobile home or recreational vehicle unless such mobile home or recreational vehicle, its components, systems, and appliances have been constructed and assembled in accordance with the standards herein defined.

(2) Any mobile home or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules prescribed in parts 1 through 4.

(3) All mobile home or recreational vehicle units thus approved shall be acceptable as meeting the requirements of parts 1 through 4 throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits required by local ordinance.

History: En. Sec. 3, Ch. 348, L. 1971; amd. Sec. 10, Ch. 226, L. 1974; amd. Sec. 2, Ch. 459, L. 1975; R.C.M. 1947, 69-2123.

50-60-403. Use of independent testing laboratories authorized. The department may utilize independent testing laboratories or the agencies of other states to determine if approved models of factory-built buildings or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part).

50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A municipality may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the municipality;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the municipality has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a municipality under this section may be recognized and accepted by any other municipality of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted.

History: En. Sec. 1, Ch. 440, L. 1979.

Compiler's Comments

Codification. Sec. 2, Ch. 440, L. 1979, provided: "Section 1 is intended to be codified as an integral part of Title 50, chapter 60, and the provisions contained in Title 50, chapter 60, apply to section 1."

Part 5

Plumbing Installations

50-60-501. Declaration of public interest. It is hereby declared that the public health and welfare require that minimum standards for the planning, installing, altering, extending, repairing, and maintaining of plumbing systems be established for the protection of the people of the state.

History: En. Sec. 1, Ch. 251, L. 1959; R.C.M. 1947, 66-2412.

50-60-502. No penalties for hiring unlicensed plumbers. This part shall not be construed as imposing any penalty on any person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who shall himself engage in the field of plumbing at a time when he is not duly licensed shall be subject to the penalties imposed by this part and Title 37, chapter 69.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415.

50-60-503. Exceptions. This part shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; R.C.M. 1947, 66-2426.

50-60-504. Department to prescribe minimum standards. The department of administration shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations or maintenance, except where exempt by 50-60-503.

History: En. Sec. 5, Ch. 251, L. 1959; amd. Sec. 18, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 236, Ch. 350, L. 1974; amd. Sec. 9, Ch. 497, L. 1975; amd. Sec. 5, Ch. 504, L. 1977; R.C.M. 1947, 66-2416.

50-60-505. Permit required. (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the department of administration.

(2) A separate permit shall be obtained for each building or structure.

(3) No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part).

50-60-506. Exceptions to permit requirement. (1) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) No permit is required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) No state permit is required whenever the installation occurs in an area governed by a municipality and where there is in effect a municipal building code which covers plumbing installations and which provides inspection procedures.

(4) Nothing contained in this part shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this part.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(2).

50-60-507. Application for and issuance of permit. (1) A person required to apply for a permit shall make application on forms provided by the department of administration or authorized representative. He shall give a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection therewith.

(2) The department or its authorized representative may require sketches, specifications, or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(3).

50-60-508. Permit fees. (1) The department of administration shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the earmarked revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part).**

50-60-509. Person commencing work without a permit to pay double the permit fee — exception. Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of administration or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part).**

50-60-510. Inspection by department to insure compliance. All plumbing and drainage systems may be inspected by the department of administration or its authorized representative to insure compliance with the requirements of the state plumbing code.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(5).**

50-60-511. Duty of permittee regarding inspection and compliance. (1) It is the duty of the person doing work authorized by the permit to notify the department of administration, orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

(2) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(6).**

50-60-512. Department authorized to order work stopped for noncompliance. Whenever any work is being done contrary to the provisions of the state plumbing code, the department of administration or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(7).**

50-60-513. Suspension or revocation of permit. The department of administration may suspend or revoke a permit whenever it is issued in error or on the basis of incorrect information supplied or work performed thereunder is in violation of any of the provisions of this part or Title 37, chapter 69.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(8).

50-60-514. District court — jurisdiction — restraining orders. The district court of any county has jurisdiction in equity, on application of the department of administration, to restrain from connection any new plumbing installations on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code.

History: En. Sec. 6, Ch. 251, L. 1959; amd. Sec. 237, Ch. 350, L. 1974; amd. Sec. 6, Ch. 504, L. 1977; R.C.M. 1947, 66-2417.

50-60-515. Penalty for violations — exceptions. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this part or at a time when he is not exempt from the provisions of this part pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $10 and not more than $100 for each separate offense. However, this part shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 and 50-60-503 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411.

Part 6

Electrical Installations

50-60-601. Purpose. The purpose of this part is to protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; and to insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

50-60-602. Exceptions. (1) Nothing in this part shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city.

(2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business

premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(3) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(4) No provisions of this part shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812(part).

50-60-603. Electrical installations to comply with building codes adopted by department. (1) All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 50-60-602, shall be made substantially in accord with building codes adopted by the department of administration.

(2) Rules and standards relating to buildings and equipment shall be promulgated by the department.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

50-60-604. Department to make inspections, issue inspection tags, and establish fees. The department of administration shall make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for the inspections, which may not exceed the expense of providing the inspection.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(1).

50-60-605. Power supplier not to energize installation without inspection tag. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of administration.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(2); amd. Sec. 1, Ch. 101, L. 1979.

50-60-606. Power supplier to deliver inspection tag to department after installation energized. Immediately after an installation has been energized, the power supplier shall deliver to the department of administration the inspection tag covering the installation.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(3).

50-60-607. Unlawful acts. It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of administration.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(4).

Part 7

Elevators

50-60-701. Inspection of passenger elevators and escalators — fees. (1) All passenger elevators and escalators in public places may be inspected by the department to insure compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections of passenger elevators and escalators to assure compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the elevator or escalator equipment; or

(b) an insurance company representative certified by the department who regularly inspects an elevator or escalator insured by the company against public liability and who maintains a service record of the elevator or escalator.

(3) When an inspection of a passenger elevator or escalator is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department.

History: En. Sec. 2, Ch. 315, L. 1979.

50-60-702. Department to adopt inspection standards — certification of inspectors. (1) The department shall adopt standards for passenger elevator and escalator inspections that assure compliance with the requirements of the state building code.

(2) The department shall adopt rules for the certification of maintenance and insurance company inspectors who may inspect passenger elevators and escalators pursuant to 50-60-701.

History: En. Sec. 3, Ch. 315, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 315, L. 1979, provided: "A statement of intent is required for S.B. 467 because it delegates rulemaking authority to the Department of Administration in Sections 2 and 3.

Section 2 authorizes the Department to inspect all passenger elevators and escalators pursuant to applicable building codes currently in effect, and requires the establishment of uniform and reasonable fees not to exceed the expense of inspection. Section 3 requires the establishment of inspection standards to ensure compliance with the applicable state building codes. It is our intent to avoid multiplicity of inspections by the department, liability insurers, other regulatory agencies, and for elevators under maintenance contract with a bona fide maintenance company. It is further our intent that the department shall certify such inspections based upon a reasonable showing that the inspectors performing other inspections are qualified, and that the inspections themselves will achieve substantial compliance with the applicable state building codes. Finally, it is our intent that elevator inspections shall be limited to only passenger elevators and not elevators that are used primarily for the transportation of freight or cargo."

50-60-703. When inspection of elevators not necessary. Elevators that do not carry passengers do not need to be inspected by the department.

History: En. Sec. 4, Ch. 315, L. 1979.

CHAPTER 61

FIRE SAFETY IN PUBLIC BUILDINGS

Part 1 — General Provisions

Section

50-61-101. Purpose of chapter.
50-61-102. Fire marshal to administer chapter.
50-61-103. Application of chapter — definitions.
50-61-104. Fire escape requirements.
50-61-105. Specifications for adequate fire escapes.
50-61-106. Unlawful to obstruct fire escape.
50-61-107. Guide signs and exit lights required.
50-61-108. Alarm system required.
50-61-109. Safety requirements for corridors.
50-61-110. Safety requirements for exterior stairways.
50-61-111. Fire extinguisher requirements.
50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies.
50-61-113. Prior approval required for construction of state-owned building designed for human occupancy.
50-61-114. Fire chief and county sheriff to make inspections.
50-61-115. Notice of violations.
50-61-116. Lessee who corrects violations entitled to reimbursement.
50-61-117. Duty of fire marshal to file complaints of violations — duty of county attorney to prosecute complaints.
50-61-118. Injunction authorized.
50-61-119. Violation of chapter a misdemeanor.

Part 1

General Provisions

50-61-101. Purpose of chapter. The purpose and intent of this chapter is to provide for the public safety in case of fire in those occupancies specified in 50-61-103; to provide for fire escapes, fire-fighting apparatus, fire alarms; and to provide for inspection of such buildings and premises by specified officers.

History: En. Sec. 1, Ch. 279, L. 1947; amd. Sec. 9, Ch. 229, L. 1967; R.C.M. 1947, 69-1801.

50-61-102. Fire marshal to administer chapter. The state fire marshal has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under his general charge and supervision, shall assist him in giving effect to this chapter, and are subject to his direction and the rules adopted for the enforcement of this chapter.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(6).

50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

(a) armories;
(b) assembly halls;
(c) auditoriums;
(d) bowling alleys;
(e) broadcasting studios;
(f) chapels;
(g) churches;
(h) club rooms;
(i) dance halls;
(j) exhibition rooms;
(k) gymnasiums;
(l) lecture halls;
(m) lodge rooms;
(n) motion picture theaters;
(o) museums;
(p) night clubs;
(q) opera houses;
(r) passenger stations;
(s) pool rooms;
(t) recreation areas;
(u) restaurants;
(v) skating rinks;
(w) television studios;
(x) theaters; and
(y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business or the rendering or receiving of professional services, including among others:

(a) banks;
(b) barbershops;
(c) beauty parlors;
(d) office buildings;
(e) radio stations;
(f) telephone exchanges; and
(g) television stations.

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or receiving educational instruction, including among others:

(a) academies;
(b) colleges;
(c) libraries;
(d) schools; and
(e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:

(a) assembly plants;
(b) creameries;
(c) electric substations;
(d) factories;
(e) ice plants;
(f) laboratories;
(g) laundries;
(h) manufacturing plants;
(i) mills;
(j) power plants;
(k) processing plants;
(l) pumping stations;
(m) repair garages;
(n) smokehouses; and
(o) workshops.

(5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:

(a) asylums;
(b) homes for the aged;
(c) hospitals;
(d) houses of correction;
(e) day-care facilities;
(f) infirmaries;
(g) jails;
(h) nurseries;
(i) orphanages;
(j) nursing homes;
(k) penal institutions;
(l) reformatories;
(m) sanitariums;
(n) long-term care facilities; and
(o) boarding homes.

(6) "Residential occupancy" means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including among others (but not including single-family private houses):

(a) apartments;
(b) clubhouses;
(c) convents;
(d) dormitories;
(e) dwellings;
(f) hotels;
(g) motels;
(h) multifamily houses; and
(i) lodging houses.

History: **En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967; amd. Sec. 12, Ch. 187, L. 1977; R.C.M. 1947, 69-1802.**

50-61-104. Fire escape requirements. (1) All buildings described in 50-61-103, except private residences, of two or more stories in height shall be equipped with not less than one adequate fire escape for each 5,000 square feet of lot area or fraction thereof occupied by the building.

(2) "First story" is defined as being the story the ceiling of which is first above the level of the grade, said ceiling being an average of 5 feet or more above the ground surrounding the building.

History: En. Sec. 3, Ch. 279, L. 1947; amd. Sec. 1, Ch. 159, L. 1949; R.C.M. 1947, 69-1803.

50-61-105. Specifications for adequate fire escapes. (1) Adequate fire escapes provided for in the preceding section shall be of interior or exterior type.

(2) It is hereby made the duty of the state fire marshal to prepare and promulgate minimum specifications for the construction and erection of each type of fire escape authorized by this chapter, which specifications shall be based upon a working stress of not less than 16,000 pounds to the square inch for steel, 12,000 pounds to the square inch for wrought iron, and 700 pounds to the square inch for concrete.

(3) Exterior fire escapes shall be constructed of concrete stairway, an iron or steel stairway, an iron or steel straight chute, or they may be constructed of other fire-resistive material of equal strength, to which there shall be free, unoccupied, and unobstructed passage and free, unoccupied, and unobstructed egress and ingress to and from the interior of the building. Where outside stairways do not reach the ground, same must have an iron stairway from the lowest balcony to the ground, counterbalanced so that same shall remain in a horizontal position when not in use. This stairway must be constructed in the same manner and of the same material as those of the upper balconies. When a suspended weight is used as a counterbalance, proper guides or places must be provided.

(4) Specifications for interior fire escapes shall require that they be enclosed with noncombustible material and that all stairways, halls, air chutes, laundry chutes, and all door and window openings in such interior fire escapes be properly protected with automatic or self-closing fire doors or shutters and that all stairway escapes be continuous and suitably connected with the roof of the building.

(5) No fire escape shall be approved as complying with the provisions of this chapter, the material and erection of which are not at least the equivalent of the minimum specifications promulgated by the state fire marshal.

History: En. Sec. 4, Ch. 279, L. 1947; R.C.M. 1947, 69-1804.

50-61-106. Unlawful to obstruct fire escape. It shall be unlawful to obstruct in any manner whatsoever any fire escape required by the provisions of this chapter or hallway, corridor, or entranceway leading thereto.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-107. Guide signs and exit lights required. It shall be the duty of the owner entitled to the beneficial use, rental, or control or, if the owner be a nonresident, the occupant or lessee of any building where fire escapes are required also to provide and maintain in good condition at all times therein proper guide signs and exit lights, which signs and lights shall be of a sufficient number on each floor to indicate the location of fire escapes and all entrances thereto.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-108. Alarm system required. (1) All buildings within the scope of this chapter occupied at night by more than 10 persons, if more than one story in height, shall have in each story an electrically operated gong or gongs to be operated by any one of a number of switches, one of which shall be on each floor. Said gong or gongs shall not be less than 6 inches in diameter and installed with not less than number 14 rubber covered wire.

(2) In lieu of said gong or gongs, such buildings may be equipped with a telephone alarm system operated from a central switchboard. Wherever such telephone system is used in such buildings, an attendant shall be on duty at the central switchboard 24 hours daily, the alarm from such switchboard shall be simultaneous in all rooms of the building, and a single switch at the switchboard shall operate said telephone alarm system.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-109. Safety requirements for corridors. (1) In all buildings hereafter erected or occupied at night for sleeping purposes and which require a fire escape or fire escapes, the public corridors shall extend to all fire escapes.

(2) In all buildings erected at July 1, 1947, not more than one room shall intervene between the corridor and the fire escape. When such a room intervenes, said corridor shall have a glass panel extending from the top rail to the door knob and the glass shall be of a kind that is easily broken. Any lock on such corridor door shall be of a nightlatch type that can be operated from inside the room without a key. Close to such door in the corridor side shall be kept an adequate instrument for breaking the glass, with an explanatory label, subject to the approval of the local fire chief or the state fire marshal.

History: En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(b), (c).

50-61-110. Safety requirements for exterior stairways. Exterior stairways hereinafter installed shall be located on buildings as remote from interior stairways as possible.

History: En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(a).

50-61-111. Fire extinguisher requirements. No fire extinguisher or extinguishers containing any of the following liquids: Carbon tetrachloride (CCl4); Chlorobromomethane (CH2BrCl); Azeotropic chlormethane (CM-7); Dibromodifluoromethane (CBr2F2); 1, 2-Dibromo-2-chloro-1, 1, 2-trifluoroethane (CBrF2CBrClF); 1, 2-Dibromo-2, 2-difluoroethane (CH2BrCBrF2); Methyl bromide (CH3Br); Ethylene dibromide (CH2BrCH2Br); 1, 2-Dibromotetrafluoroethane (CBrF2CBrF2); Hydrogen bromide (HBr); Methylene bromide (CH2Br2); Bromodifluoromethane (CHBrF2); and Dichlorodifluoromethane (CCl2F2) or any other toxic or poisonous vaporizing liquid shall be kept or maintained in or upon any building without written approval by the state fire marshal or his deputy.

History: En. Sec. 7, Ch. 279, L. 1947; amd. Sec. 1, Ch. 227, L. 1959; amd. Sec. 1, Ch. 254, L. 1975; R.C.M. 1947, 69-1807.

50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies. (1) Within an incorporated municipality, an educational or institutional occupancy, whether public or private, may not be constructed or have alterations made costing $1,500 or more until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to the state fire marshal and approved by him.

(2) Outside an incorporated municipality, an assembly, educational, or institutional occupancy may not be constructed or have alterations made costing $1,500 or more until a permit has been issued for the construction or alteration by the county commissioners. A fee of $10 shall be paid to the county treasurer for each permit. A copy of the permit shall be furnished to the county assessor. No permit may be issued until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to the state fire marshal and approved by him. The fire marshal and county sheriffs are responsible for enforcing the provisions of this subsection.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(1), (2).

50-61-113. Prior approval required for construction of state-owned building designed for human occupancy. A building designed for human occupancy owned or controlled by the state may not be constructed until plans for the construction have been submitted to the state fire marshal and approved by him.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(3).

50-61-114. Fire chief and county sheriff to make inspections. The chief of the fire department of each municipality or district where a fire department is established and the county sheriff or deputy fire marshals where no fire department exists shall enter into all buildings and upon all premises within their jurisdiction at least once each 6 months for the purpose of examining the premises for violations of this chapter. The inspection shall include but is not limited to testing fire alarms and fire extinguishers, examining fire hose, attachments, and other fire apparatus, and examining fire escapes. Copies of the inspection shall be filed in the office of the state fire marshal on forms to be provided by him.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(4).

50-61-115. Notice of violations. (1) When a building is found which requires the erection of fire escapes and upon which fire escapes have not been erected according to the provisions of this chapter or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition, the person making the inspection or the state fire marshal shall serve a written notice upon the party whose duty it is to erect the fire escapes or maintain such fire apparatus.

(2) The notice shall specify the time within which the fire escapes shall be erected or the defective conditions remedied, which may not be more than 90 days.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body.

History: **En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).**

50-61-116. Lessee who corrects violations entitled to reimbursement. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to reimburse himself for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or convenant thereof or grounds for any action or damage ouster.

History: **En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).**

50-61-117. Duty of fire marshal to file complaints of violations — duty of county attorney to prosecute complaints. It shall be the duty of the state fire marshal or any person authorized to act in his stead to file complaint for violations of the provisions of this chapter in any court of competent jurisdiction within the county where said violations occur, and it shall be the duty of the county attorney of such county to forthwith prosecute all such complaints so filed.

History: **En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).**

50-61-118. Injunction authorized. In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty to erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this chapter, the attorney general of the state or any county attorney of the county where the building is located shall bring an action against the owner, lessee, and occupants of the building for an injunction enjoining the further occupancy of it until it is in compliance with this chapter. The action may be brought in the county where such building is located.

History: **En. Sec. 11, Ch. 279, L. 1947; R.C.M. 1947, 69-1810; amd. Sec. 20, Ch. 37, L. 1979.**

50-61-119. Violation of chapter a misdemeanor. (1) Any person failing, neglecting, or refusing to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $50.

(2) Each day's failure to comply with any of the provisions of this chapter, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense.

History: **En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).**

CHAPTER 62

FIRE HAZARDS

Part 1 — Removal of Hazards

Section
50-62-101. Entering of buildings for purpose of examination authorized.
50-62-102. Structures creating fire hazard a public nuisance.
50-62-103. Service of order to repair or demolish structure.
50-62-104. Answer of owner or occupant.
50-62-105. Default judgment.
50-62-106. Hearing and judgment.
50-62-107. Proceedings on failure to comply with order.
50-62-108. Conditions or materials creating fire hazard — order to remedy.
50-62-109. Failure to comply with order.
50-62-110. Appeal to state fire marshal.
50-62-111. Penalty for failure to comply with order to correct.

Part 1

Removal of Hazards

50-62-101. Entering of buildings for purpose of examination authorized. The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality or district where a fire department is established, or the county sheriff where no fire department exists at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R.C.M. 1921; re-en. Sec. 2752, R.C.M. 1935; amd. Sec. 8, Ch. 229, L. 1967; R.C.M. 1947, 82-1218.

50-62-102. Structures creating fire hazard a public nuisance. Any building or other structure which for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus; or for any other cause or reason is especially liable to fire and which is so situated as to endanger other buildings and property in the vicinity is hereby declared to be a public nuisance.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part).

50-62-103. Service of order to repair or demolish structure. (1) If the state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101, upon an examination or inspection, finds that a building or other structure which for want of proper repair or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections or defective heating apparatus or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, he shall order the structure to be repaired, torn down, or demolished and all materials removed and all dangerous conditions remedied.

(2) The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in that court.

(3) A copy of the order filed as aforesaid, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall be served upon the owner of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service shall also be made upon him. Service shall be made upon the owner and occupant, if there is one, personally either within or without the state.

(4) If the whereabouts of the owner is unknown and he cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of the notice upon the owner may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof in a conspicuous place upon the building or structure, and the service so made is complete upon the expiration of the publication period. Proof of service of the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part); amd. Sec. 21, Ch. 37, L. 1979.

50-62-104. Answer of owner or occupant. (1) The owner of any building so condemned or any occupant or lessee upon whom such notice or order shall be served, within 20 days from the date of such service, may file with the clerk of the district court and serve upon the said state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101 written objections to said order in the form of a verified answer denying the existence of any of the facts therein cited which he desires to controvert.

(2) If an answer be filed and served, the court shall hear and determine the issues so raised and give judgment thereon.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part).

50-62-105. Default judgment. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the state fire marshal to proceed with the enforcement thereof.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part).

50-62-106. Hearing and judgment. (1) The court, upon application of the state fire marshal, deputy state fire marshal, or any officer mentioned in 50-62-101, shall make its order fixing a time and place for such hearing, which time shall be within 20 days from the date of the filing of the answer or as soon thereafter as the matter may be heard.

(2) If, upon such trial the order shall be sustained, judgment shall be given accordingly and a time shall be fixed within which the building or structure shall be altered, destroyed, or repaired in compliance with such order, but otherwise the court shall annul or set aside the order of condemnation.

History: En. Sec. 2753-B, Ch. 139, L. 1929; re-en. Sec. 2753.2, R.C.M. 1935; R.C.M. 1947, 82-1221.

50-62-107. Proceedings on failure to comply with order. (1) If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure within the time fixed by the court in case a trial is had therein, then the state fire marshal or any other officer authorized in 50-62-101 shall proceed to cause such building or structure to be altered, repaired, or demolished in accordance with the directions contained in such order.

(2) Where a building or structure is demolished in accordance with such order, the state fire marshal or any other officer authorized in 50-62-101 may sell or dispose of the salvaged materials therefrom at public auction upon 5 days' posted notice. This person shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof, the expense incurred by him, and the amount, if any, received from such salvage sale to the court for approval and allowance. The court shall examine, correct if necessary, and allow said expense account, and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated. If the amount thereof is not paid by the owner or other party in interest within 3 months after the account has been examined and approved by the court, the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury of the governmental unit which incurred the expenses. If the amount received as salvage or on sale shall exceed the expense incurred by the governmental unit, the court shall direct the payment of the surplus to those parties with encumbrances, mortgages, or liens on the real estate in order of their priority and any surplus thereafter to the owner or the payment of the same into court for their use and benefit.

History: En. Sec. 2753-C, Ch. 139, L. 1929; re-en. Sec. 2753.3, R.C.M. 1935; amd. Sec. 1, Ch. 418, L. 1975; R.C.M. 1947, 82-1222.

50-62-108. Conditions or materials creating fire hazard — order to remedy. If the state fire marshal, deputy state fire marshal, or any officer mentioned in 50-62-101 finds in any building or premises subject to their inspection any combustible materials, inflammable conditions, or fire hazards dangerous to the safety of the building premises or to the public, such officer shall order such material, conditions, or hazards to be removed or remedied. Such order shall be in writing and directed generally to the owner, lessee, agent, or occupant of such building or premises.

History: **En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part).**

50-62-109. Failure to comply with order. Any such owner, lessee, agent, or occupant upon whom such notice shall be served who shall fail to comply therewith within 24 hours thereafter, unless the order prescribes a longer time within which it may be complied with, shall be guilty of a misdemeanor, and said material may be removed or dangerous condition corrected at the expense of the owner of such building or premises or at the expense of the person upon whom such service is so made, or both, and the said state fire marshal, deputy state fire marshal, or other officer mentioned in 50-62-101 may maintain all necessary actions for the recovery thereof.

History: **En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part).**

50-62-110. Appeal to state fire marshal. If the owner or occupant deems himself aggrieved by an order of an officer under this chapter, he may appeal to the state fire marshal within 24 hours and the cause of the complaint shall at once be investigated by direction of the state fire marshal. Unless such order is revoked by the state fire marshal, it shall remain in force and forthwith be complied with by such owner or occupant.

History: **En. Sec. 17, Ch. 148, L. 1911; re-en. Sec. 2754, R.C.M. 1921; re-en. Sec. 2754, R.C.M. 1935; R.C.M. 1947, 82-1224.**

50-62-111. Penalty for failure to comply with order to correct. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in this chapter shall be fined not less than $10 or more than $50 for each day's neglect.

History: **En. Sec. 18, Ch. 148, L. 1911; re-en. Sec. 2755, R.C.M. 1921; re-en. Sec. 2755, R.C.M. 1935; R.C.M. 1947, 82-1225.**

CHAPTER 63

INVESTIGATION OF FIRES

Part 1 — General Provisions

Section

50-63-101. Examination of premises where fire occurred authorized.
50-63-102. Penalty for setting or leaving fire causing damage.
50-63-103. Liability of offender for damages and costs.

Part 2 — Initial Investigation

50-63-201. Cause of fire to be investigated.
50-63-202. Fire chief or sheriff to conduct investigation.
50-63-203. Reports to be filed with fire marshal.
50-63-204. Penalty for failure to investigate or file report.

Part 3 — Investigation by Fire Marshal

50-63-301. Further investigation by fire marshal.
50-63-302. Private investigation authorized.

50-63-303. Fire marshal authorized to compel testimony and production of evidence.
50-63-304. Procedure to compel testimony or production of evidence.
50-63-305. Fire marshal authorized to administer oaths.
50-63-306. Refusal to testify a misdemeanor.
50-63-307. Punishment for contempt — attendance of witnesses by attachment.
50-63-308. Arrest and prosecution of arsonist.

Part 4 — Information from Insurers

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request.
50-63-402. Insurer to report suspicious fires.
50-63-403. Agencies to keep information confidential.
50-63-404. Testimony of agency personnel in action to recover under insurance policy.
50-63-405. Exemption of insurer from liability.

Part 1

General Provisions

50-63-101. Examination of premises where fire occurred authorized. In the performance of the duties imposed by the provisions of this chapter, the state fire marshal and each of his subordinates at all times of day or night may enter upon and examine any building or premises where a fire has occurred and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911; re-en. Sec. 2751, R.C.M. 1921; re-en. Sec. 2751, R.C.M. 1935; R.C.M. 1947, 82-1217.

50-63-102. Penalty for setting or leaving fire causing damage. (1) Any person who shall upon any land within this state set or leave any fire that shall spread and damage or destroy property of any kind not his own shall upon conviction be punished by a fine of not less than $10 or more than $500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than $10 or more than $100 or be imprisoned in the county jail not exceeding 60 days.

History: En. Sec. 4, Ch. 170, L. 1919; re-en. Sec. 2766, R.C.M. 1921; re-en. Sec. 2766, R.C.M. 1935; R.C.M. 1947, 82-1236.

50-63-103. Liability of offender for damages and costs. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property shall be liable for all costs and expenses incurred by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: **En. Sec. 7, Ch. 170, L. 1919; re-en. Sec. 2769, R.C.M. 1921; re-en. Sec. 2769, R.C.M. 1935; R.C.M. 1947, 82-1237.**

Part 2

Initial Investigation

50-63-201. Cause of fire to be investigated. The cause, origin, and circumstances of each fire by which property has been destroyed or damaged shall be investigated to determine the exact cause and circumstances. The state fire marshal may superintend and direct the investigation if he deems it necessary.

History: **En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(1).**

50-63-202. Fire chief or sheriff to conduct investigation. If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation.

History: **En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part).**

50-63-203. Reports to be filed with fire marshal. (1) If it appears that the fire was of suspicious origin or if there was a loss of human life, the official responsible for the investigation shall notify the state fire marshal within 24 hours and shall file a written report of the cause with the state fire marshal within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the state fire marshal of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the state fire marshal.

(3) Each official responsible for investigating fires shall file a fire incident report on each and every fire with the state fire marshal. Reports shall be on forms and shall contain information prescribed by the state fire marshal. These reports shall be sent to the state fire marshal on a weekly basis.

History: **En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part).**

50-63-204. Penalty for failure to investigate or file report. Any person who fails to comply with the requirements of this part shall be fined not less than $25 or more than $200.

History: **En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R.C.M. 1921; re-en. Sec. 2745, R.C.M. 1935; amd. Sec. 7, Ch. 229, L. 1967; R.C.M. 1947, 82-1211.**

Part 3

Investigation by Fire Marshal

50-63-301. Further investigation by fire marshal. (1) If in his opinion further investigation is necessary, the state fire marshal or a deputy state fire marshal shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter concerning which an examination is required by law to be made and cause such testimony to be reduced to writing.

(2) If the state fire marshal or a deputy fire marshal is notified by an officer or other person or knows of a violation of the laws of this state relating to fires, he shall immediately and diligently inquire into the facts of the violation.

History: (1)En. Sec. 9, Ch. 148, L. 1911; re-en. Sec. 2746, R.C.M. 1921; re-en. Sec. 2746, R.C.M. 1935; Sec. 82-1212, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1212, 82-1215(part).

50-63-302. Private investigation authorized. Investigation by or under the direction of the state fire marshal may, in his discretion, be private. He may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not be allowed to communicate with each other until they have been examined.

History: En. Sec. 13, Ch. 148, L. 1911; re-en. Sec. 2750, R.C.M. 1921; re-en. Sec. 2750, R.C.M. 1935; R.C.M. 1947, 82-1216.

50-63-303. Fire marshal authorized to compel testimony and production of evidence. (1) The state fire marshal or deputy state fire marshal may summon and compel the attendance of witnesses before him to testify in relation to any matter which by law is a subject of inquiry and investigation and require the production of any book, paper, or document he deems pertinent.

(2) The state fire marshal or a deputy fire marshal is authorized to have a subpoena issued for a person he has reason to believe has information or knowledge concerning a violation of the laws relating to fires. The subpoena shall command the person to appear before a justice of the peace at the time and place designated in the subpoena to testify concerning a violation of the laws relating to fires.

History: (1)En. Sec. 11, Ch. 148, L. 1911; re-en. Sec. 2748, R.C.M. 1921; re-en. 2748, R.C.M. 1935; Sec. 82-1214, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1214, 82-1215(part).

50-63-304. Procedure to compel testimony or production of evidence. (1) For the purpose of having a subpoena issued, the state fire marshal or deputy fire marshal may file with a justice of the peace a written statement signed by the state fire marshal or deputy fire marshal, alleging a violation of the laws of this state relating to fires, and naming the witness to be subpoenaed. The justice of the peace shall issue a subpoena for the witness named commanding him to appear before the justice of the peace at the time designated in the subpoena to testify concerning a violation of the laws relating to fires.

(2) The subpoena may be served by the sheriff or any peace officer of the county or by any other person who is a citizen of the county and shall be served and returned to the state fire marshal, deputy fire marshal, or justice of the peace in the same manner that subpoenas are served and returned when issued by justices of the peace.

(3) The witness shall be sworn to make true answers to all questions touching the matters under investigation propounded to him, and his testimony shall be reduced to writing and be signed by him.

History: **En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).**

50-63-305. Fire marshal authorized to administer oaths. For the purpose of this chapter, the state fire marshal or a deputy fire marshal is authorized to administer an oath to a person appearing as a witness in a proceeding investigating a violation of the laws relating to fires. False swearing in such a proceeding is perjury and shall be punished as such.

History: **En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).**

50-63-306. Refusal to testify a misdemeanor. Disobedience to a subpoena, refusal to be sworn as a witness or to sign the testimony given by a witness, or refusal to answer a proper question propounded to a witness is a misdemeanor, and a person convicted thereof shall be fined no more than $100 or be imprisoned in the county jail for any term not to exceed 90 days, or both.

History: **En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).**

50-63-307. Punishment for contempt — attendance of witnesses by attachment. (1) A justice of the peace, when acting under the provisions of this chapter, may adjourn proceedings from time to time and punish a witness for contempt because of his refusal to be sworn, to answer questions as a witness, or to sign his testimony.

(2) The justice of the peace may compel the attendance of witnesses by attachment.

History: **En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).**

50-63-308. Arrest and prosecution of arsonist. (1) If the state fire marshal or a deputy is of the opinion that there is evidence sufficient to charge a person with arson or a similar crime, he shall arrest him or cause him to be arrested and charged with such offense. He shall furnish the prosecuting attorney such evidence, with the names of witnesses and a copy of material testimony taken in the case.

(2) If the testimony so taken discloses the fact that an offense has been committed, the county attorney of the county in which the offense was committed shall prosecute the person committing the offense in the same manner as in other criminal cases.

History: **(1)En. Sec. 10, Ch. 148, L. 1911; re-en. Sec. 2747, R.C.M. 1921; re-en. Sec. 2747, R.C.M. 1935; Sec. 82-1213, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919;**

re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1213, 82-1215(part).

Part 4

Information from Insurers

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request. Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement or fire protection agency release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

(1) any insurance policy relevant to the fire loss under investigation and any application for such a policy;

(2) premium payment records;

(3) the history of previous claims made by the insured for fire loss;

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence.

History: En. Sec. 1, Ch. 145, L. 1979.

50-63-402. Insurer to report suspicious fires. Whenever an insurer has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, it shall notify an appropriate law enforcement or fire protection agency and provide such agency with all material developed from its inquiry into the fire loss.

History: En. Sec. 2, Ch. 145, L. 1979.

50-63-403. Agencies to keep information confidential. The insured's right of individual privacy requires agencies and agency personnel receiving information furnished pursuant to 50-63-401 and 50-63-402 to hold the information in confidence unless:

(1) the insured waives his right of individual privacy; or

(2) release of the information is required pursuant to a criminal or civil proceeding.

History: En. Sec. 3, Ch. 145, L. 1979.

50-63-404. Testimony of agency personnel in action to recover under insurance policy. Law enforcement and fire protection agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss.

History: En. Sec. 4, Ch. 145, L. 1979.

50-63-405. Exemption of insurer from liability. In the absence of fraud or bad faith, the insurer or person who furnished information on its behalf is not subject to liability in any civil action for:

(1) furnishing information as required by 50-63-401; or

(2) notifying an appropriate agency of a fire loss as required by 50-63-402.

History: En. Sec. 5, Ch. 145, L. 1979.

CHAPTER 64

ASBESTOS REGULATION IN BUILDING CONSTRUCTION AND DEMOLITION

Part 1 — General Provisions

Section

50-64-101. Purpose.
50-64-102. Definitions.
50-64-103. Rulemaking authorized.
50-64-104. Safeguards to follow during demolition.
50-64-105. Use of asbestos-containing spray products prohibited.
50-64-106. Use of fibrated product or compound — supervisory personnel required.
50-64-107. Violations — penalties.

Part 1

General Provisions

50-64-101. Purpose. The purpose of this chapter is to protect the citizens of Montana from the dangers precipitated by the use of spray materials containing mineral fibers. The legislature finds that if adequate safety precautions are not taken during the spray application of these materials, spraying operations may release a significant quantity of particulate matter into the ambient air. Likewise, the legislature finds the continued unregulated use of sprayed asbestos insulation and the destruction of structures containing asbestos insulation represent a significant threat to the health of workers placed in contact with these fibers and to the health of the community as a whole.

History: **En. 69-7401 by Sec. 1, Ch. 570, L. 1977; R.C.M. 1947, 69-7401.**

50-64-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of administration.

(2) "Fibrated product" means a substance used in construction for whatever purpose which contains asbestos fibers which tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity.

History: **En. 69-7402 by Sec. 2, Ch. 570, L. 1977; R.C.M. 1947, 69-7402.**

50-64-103. Rulemaking authorized. The department is granted authority to promulgate rules necessary to accomplish the purposes of this chapter.

History: **En. 69-7406 by Sec. 6, Ch. 570, L. 1977; R.C.M. 1947, 69-7406.**

50-64-104. Safeguards to follow during demolition. The building or structure to be demolished which contains asbestos insulation or fireproofing must follow the following safeguards:

(1) Whenever possible, the local fire department shall be notified of the demolition.

(2) Signs must be posted in conspicuous locations around the building or structure being demolished warning persons to take proper precautions against exposure to asbestos fibers before entering the area.

(3) Boilers, pipes, and steel members insulated or fireproofed with asbestos must be wetted before toppling of the wall begins. This mandatory procedure applies, where practicable, to all asbestos-lined surfaces.

(4) When demolition by toppling is performed, a reasonable enclosure for dust emission control must be constructed.

(5) Adequate wetting to suppress dust must be performed before and during the demolition or toppling.

(6) Asbestos-containing debris may not be dropped or thrown from any floor and must be transported by dust-tight chutes or buckets, with the chutes or buckets sufficiently wetted to prevent dust.

(7) During transportation of the debris, it must be thoroughly wetted before loading and must be enclosed or covered during its transport to prevent dust dispersion.

(8) The asbestos-containing debris must be deposited at a sanitary landfill at which it is unlikely to be disturbed, and signs must be posted around the landfill warning that asbestos-containing debris is buried there.

History: **En. 69-7403 by Sec. 3, Ch. 570, L. 1977; R.C.M. 1947, 69-7403.**

50-64-105. Use of asbestos-containing spray products prohibited. The use of asbestos-containing spray products, for whatever purpose, in the construction of a building or structure is prohibited.

History: **En. 69-7404 by Sec. 4, Ch. 570, L. 1977; R.C.M. 1947, 69-7404.**

50-64-106. Use of fibrated product or compound — supervisory personnel required. Whenever a fibrated product or compound is applied to a surface utilizing a spray or pneumatic means of application, one person must be assigned supervisory authority for all aspects of the operation.

History: **En. 69-7405 by Sec. 5, Ch. 570, L. 1977; R.C.M. 1947, 69-7405.**

50-64-107. Violations — penalties. (1) A person who violates any provision of this chapter commits a misdemeanor.

(2) A person convicted of violating this chapter shall be fined no more than $1,000 or be imprisoned in the county jail for a term not to exceed 60 days, or both.

(3) Each separate occurrence in violation of this chapter is a separate offense.

History: **En. 69-7407 by Sec. 7, Ch. 570, L. 1977; R.C.M. 1947, 69-7407.**

CHAPTERS 65 THROUGH 69

RESERVED

CHAPTER 70

OCCUPATIONAL HEALTH

Part 1 — General Provisions

Section

50-70-101. Short title.
50-70-102. Declaration of policy and purpose.

50-70-103. Definitions.
50-70-104. Administration.
50-70-105. Duties of department.
50-70-106. Duties of board.
50-70-107. Duty of physicians and others to report occupational disease.
50-70-108. Application for federal aid.
50-70-109. Confidentiality of records.
50-70-110. Hearing officer.
50-70-111. Hearings.
50-70-112. Permits.
50-70-113. Emissions prohibited.
50-70-114. Variances.
50-70-115. Inspection.
50-70-116. Enforcement.
50-70-117. Emergency procedure.
50-70-118. Penalty.

Part 1

General Provisions

50-70-101. Short title. This chapter shall be known and may be cited as the "Occupational Health Act of Montana".

History: En. Sec. 1, Ch. 316, L. 1971; R.C.M. 1947, 69-4206.

50-70-102. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such conditions at the work place as will protect human health and safety and, to the greatest degree practicable, foster the comfort and convenience of the workers at any work place of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this chapter to provide for a coordinated statewide program of abatement and control of occupational diseases, for an appropriate distribution of responsibilities among the state and local units of government, and for a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 316, L. 1971; R.C.M. 1947, 69-4207.

50-70-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(4) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

(5) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice which is hazardous to health;

(c) has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside his employment.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

(10) "Threshold limit values" means airborne concentrations of substances which, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

(11) "Work place" is a place or location where a person is gainfully employed.

(12) "Worker" is a person gainfully employed at any place.

History: **En. Sec. 3, Ch. 316, L. 1971; amd. Sec. 35, Ch. 349, L. 1974; R.C.M. 1947, 69-4208.**

50-70-104. Administration. Except as otherwise provided, the department is responsible for administration of this chapter.

History: **En. Sec. 4, Ch. 316, L. 1971; amd. Sec. 36, Ch. 349, L. 1974; R.C.M. 1947, 69-4209.**

50-70-105. Duties of department. The department shall:

(1) enforce board orders by appropriate administrative and judicial proceedings;

(2) secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease;

(4) encourage voluntary cooperation by persons and affected groups to achieve the purpose of this chapter;

(5) encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control;

(6) determine by means of field studies and sampling the degree of health hazard at any work place in the state;

(7) collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases;

(8) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups;

(9) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of

carrying out this chapter. Funds received by the department under this section shall be deposited in the state treasury to the account of the department.

History: En. 69-4211.1 by Sec. 38, Ch. 349, L. 1974; R.C.M. 1947, 69-4211.1.

50-70-106. Duties of board. The board shall:

(1) adopt, amend, and repeal rules implementing and consistent with this chapter;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at any place designated by the board;

(3) designate an attorney to assist in conducting hearings and appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost;

(4) issue orders necessary to carry out this chapter;

(5) require access to records relating to emissions;

(6) establish threshold limit values of airborne contaminants for the state as a whole.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

50-70-107. Duty of physicians and others to report occupational disease. (1) Before the 11th day after discovery, every physician, person in charge of a hospital or clinic, or state employee shall report an occupational disease to the department.

(2) The report shall be on forms prescribed by the department and include:

(a) name and address of the diseased person;

(b) name and business address of the employer;

(c) business of the employer;

(d) place of the person's employment;

(e) length of time the person was employed at the place where he became ill;

(f) nature of the disease;

(g) other information required by the department.

(3) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workers' compensation laws of this state.

History: En. Sec. 22, Ch. 197, L. 1967; R.C.M. 1947, 69-4204.

50-70-108. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this chapter and any other applicable requirements of law.

History: En. Sec. 15, Ch. 316, L. 1971; R.C.M. 1947, 69-4220.

50-70-109. Confidentiality of records. (1) Records or other information concerning pollutants or operations which are furnished to or obtained by the board or department and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position are only for the confidential use of the board or department in the administration of this chapter unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition at the work place if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

History: En. Sec. 14, Ch. 316, L. 1971; amd. Sec. 43, Ch. 349, L. 1974; R.C.M. 1947, 69-4219.

50-70-110. Hearing officer. The board may designate the director of health and environmental sciences as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director of health and environmental sciences as hearing officer may compel the attendance of witnesses and the production of evidence at hearings.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

50-70-111. Hearings. (1) No rule, amendment, or repeal shall take effect except after public hearing on due notice. Such notice shall be given by public advertisement not less than 20 or more than 30 days prior to the date set for the hearing.

(2) Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to 50-70-117.

(3) (a) Any person aggrieved by any order of the board may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(i) The board acted without or in excess of its powers.

(ii) The order was procured by fraud.

(iii) The order is contrary to the evidence.

(iv) The applicant has discovered new evidence material to him which he could not, with reasonable diligence, have discovered and produced at the hearing.

(v) Competent evidence was excluded to the prejudice of the applicant.

(b) The petition must be in such form and filed in such time as the board shall prescribe.

History: En. Sec. 13, Ch. 316, L. 1971; amd. Sec. 42, Ch. 349, L. 1974; R.C.M. 1947, 69-4218.

50-70-112. Permits. (1) The board may by rule prohibit the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit has been obtained from it.

(2) The board may require that applications for permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within 90 days after receiving application whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971; R.C.M. 1947, 69-4212.

50-70-113. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule.

History: En. Sec. 9, Ch. 316, L. 1971; R.C.M. 1947, 69-4214.

50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require.

(2) The board may grant the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) No exemption or partial exemption may be granted pursuant to this section except after a public hearing on due notice and until the board has considered the relative interests of the applicant and the worker or workers involved.

(4) No exemption or partial exemption pursuant to this section may be granted for a period to exceed 1 year, but an exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, after a complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. Application for renewal shall be made at least 60 days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of the application in accordance with the rules of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) of this section.

(5) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder but shall be in the discretion of the board.

(6) Nothing in this section and no exemption, partial exemption, or renewal granted may be construed to prevent or limit the application of the

emergency provisions and procedures of 50-70-117 to any person or his property.

History: En. Sec. 12, Ch. 316, L. 1971; R.C.M. 1947, 69-4217; amd. Sec. 22, Ch. 37, L. 1979.

50-70-115. Inspection. (1) The department may enter and inspect at a reasonable time property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this chapter and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status.

History: En. Sec. 8, Ch. 316, L. 1971; amd. Sec. 39, Ch. 349, L. 1974; R.C.M. 1947, 69-4213.

50-70-116. Enforcement. (1) When the department has reason to believe that a violation of this chapter or rule made under it has occurred, it may have written notice and the facts alleged to constitute a violation served on the alleged violator and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than 30 days after the date of notice is received, the person named requests in writing a hearing before the board. On receipt of a request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that a violation has occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) Instead of issuing the order provided for in subsection (1) of this section, the board may either:

(a) require that the alleged violator appear before it for a hearing at a time and place specified in a notice and answer the charges complained of; or

(b) initiate action under 50-70-118.

(4) This chapter does not prevent the board from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties.

History: En. Sec. 10, Ch. 316, L. 1971; amd. Sec. 40, Ch. 349, L. 1974; R.C.M. 1947, 69-4215.

50-70-117. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a work place exists and that it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time, not later than 72 hours thereafter, for a hearing to be held before the board. Not more than 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition as that referred to in subsection (1) of this section, if the department finds that emissions from an operation are causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately without regard to 50-70-116. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in 50-70-116 apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971; amd. Sec. 41, Ch. 349, L. 1974; R.C.M. 1947, 69-4216.

50-70-118. Penalty. (1) A person who violates this chapter relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this chapter) is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.

(2) Proceedings under this section are not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state these enforcement proceedings.

(3) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(4) Fines collected shall be deposited to the state general fund.

History: En. Sec. 16, Ch. 316, L. 1971; amd. Sec. 44, Ch. 349, L. 1974; R.C.M. 1947, 69-4221.

CHAPTER 71

OCCUPATIONAL SAFETY

Part 1 — General Provisions

Section

50-71-101. Short title.
50-71-102. Definitions.
50-71-103. Public contractors subject to chapter.
50-71-104. Effect on existing structures and equipment.
50-71-105. Qualifications of safety bureau chief.
50-71-106. Administrative powers and duties of division.
50-71-107. General research and review powers of division.
50-71-108. Power to appoint advisers.

50-71-109. Duties of division regarding occupational health hazards.
50-71-110. Violation of safety provision a misdemeanor.

Part 2 — Duties of Employer and Employee

50-71-201. Employer to furnish and require safety devices and practices.
50-71-202. Employer to provide and maintain safe place of employment.
50-71-203. Removal or refusal to use safety devices prohibited.

Part 3 — Safety Rules and Orders

50-71-301. Division's power to prescribe safety devices and fix and order safety standards.
50-71-302. Notice of hearing on rules and codes.
50-71-303. Procedure to compel testimony or production of evidence.
Sections 50-71-304 through 50-71-310 reserved.
50-71-311. Safety codes authorized.
50-71-312. Codes to be consistent with other safety codes.
50-71-313. Effective date of codes.
50-71-314. Codes to be published.
50-71-315. Variations to code.
50-71-316. Assistance in compliance.
Sections 50-71-317 through 50-71-320 reserved.
50-71-321. Periodic inspections.
50-71-322. Procedure for worker to report safety violation.
50-71-323. Order directing additions, repairs, and improvements.
50-71-324. Time allowed for compliance with order.
50-71-325. Division authorized to prohibit further use of equipment constituting violation.
50-71-326. Injunction authorized.
50-71-327. Division authorized to order closure or cessation of work.
Sections 50-71-328 through 50-71-330 reserved.
50-71-331. Right to apply for rehearing.
50-71-332. Application for rehearing.
50-71-333. Disposition of application for rehearing.
50-71-334. Judicial review.

Part 1

General Provisions

50-71-101. Short title. This chapter may be cited as the "Montana Safety Act".

History: En. Sec. 1, Ch. 341, L. 1969; R.C.M. 1947, 41-1708.

50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the division under the provisions of this chapter.

(3) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 2, Ch. 341, L. 1969; amd. Sec. 1, Ch. 182, L. 1975; R.C.M. 1946, 41-1709.

50-71-103. Public contractors subject to chapter. Every contractor performing services for the state or any political subdivision thereof shall be required to comply with the safety rules, codes, and provisions of this chapter as a part of his contract.

History: En. Sec. 24, Ch. 341, L. 1969; R.C.M. 1947, 41-1731.

50-71-104. Effect on existing structures and equipment. Nothing contained in this chapter shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to July 1, 1969, provided that replacements and alterations shall conform to all provisions of this chapter.

History: En. Sec. 25, Ch. 341, L. 1969; R.C.M. 1947, 41-1732.

50-71-105. Qualifications of safety bureau chief. The safety bureau chief shall be a person with at least 2 years' experience or training in the field of industrial safety.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part).

50-71-106. Administrative powers and duties of division. In the administration of this chapter, the division:

(1) is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment;

(2) shall carry out the provisions of this chapter;

(3) may adopt and enforce all necessary and reasonable rules and provisions for the purpose of carrying this chapter into effect and in reference to the investigation of all violations of this chapter and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this chapter into effect;

(4) may on its own motion or at the request of others subpoena witnesses, administer oaths, take depositions, fix the fees and mileage of witnesses, and compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of this state, and the division shall provide for defraying the expenses thereof.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part).

50-71-107. General research and review powers of division. The division may develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases, and related subjects through:

(1) research, conferences, lectures, and uses of public communications media;

(2) collection and dissemination of accident statistics; and

(3) development of staff competent in the review of safety codes.

History: En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(1).

50-71-108. Power to appoint advisers. The division may appoint advisers who shall be compensated by the division if necessary and who shall assist the division in establishing standards of safety. The division may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(2).

50-71-109. Duties of division regarding occupational health hazards. The division shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of health and environmental sciences and shall cooperate with the department in carrying out its duties as specified in chapter 70 of this title.

History: En. Sec. 26, Ch. 341, L. 1969; amd. Sec. 19, Ch. 182, L. 1975; R.C.M. 1947, 41-1733.

50-71-110. Violation of safety provision a misdemeanor. In addition to all other penalties herein provided, every employer, worker, or other person who either individually or acting as an officer, agent, or employee of a corporation or other person violates any safety provision of this chapter or who directly or indirectly knowingly induces another to do so is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 341, L. 1969; R.C.M. 1947, 41-1730.

Part 2

Duties of Employer and Employee

50-71-201. Employer to furnish and require safety devices and practices. Every employer shall furnish a place of employment which is safe for employees therein and shall furnish and use and require the use of such safety devices and safeguards and shall adopt and use such practices, means, methods, operations, and processes as are reasonably adequate to render the place of employment safe and shall do every other thing reasonably necessary to protect the life and safety of employees.

History: En. Sec. 3, Ch. 341, L. 1969; R.C.M. 1947, 41-1710.

50-71-202. Employer to provide and maintain safe place of employment. (1) An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

(2) Every employer who is the owner of a place of employment or lessee thereof shall repair and maintain the same as to render it safe.

History: En. Sec. 4, Ch. 341, L. 1969; R.C.M. 1947, 41-1711.

50-71-203. Removal or refusal to use safety devices prohibited. No person shall remove, displace, damage, destroy, carry off, or refuse to use any safety device or safeguard furnished and provided for his use in any employment or place of employment or interfere in any way with the use thereof by any other person or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

History: En. Sec. 5, Ch. 341, L. 1969; R.C.M. 1947, 41-1712.

Part 3

Safety Rules and Orders

50-71-301. Division's power to prescribe safety devices and fix and order safety standards. The division may, after hearing had upon its own motion or upon complaint, by safety orders, rules, or otherwise:

(1) declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law;

(2) fix reasonable standards and prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means or methods of protection to be as nearly uniform as possible as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment;

(3) fix and order such reasonable standards for the construction, repair, and maintenance of places of employment and equipment as shall render them safe;

(4) require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: En. Sec. 8, Ch. 341, L. 1969; amd. Sec. 4, Ch. 182, L. 1975; R.C.M. 1947, 41-1715.

50-71-302. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes as authorized in this chapter, the division shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the division may deem expedient. The notice shall contain a brief statement of the time, place, and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the division after the hearing.

History: En. Sec. 9, Ch. 341, L. 1969; amd. Sec. 5, Ch. 182, L. 1975; R.C.M. 1947, 41-1716.

50-71-303. Procedure to compel testimony or production of evidence. (1) The division or any member thereof before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding and ask the court to compel the witness to attend and testify or produce such papers before the division.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why the witness has not attended and testified or produced the papers before the division or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the division or member thereof, the court thereupon shall enter an order that the witness appear before the division or member thereof at a time and place to be fixed in such order and testify and produce the required papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969; amd. Sec. 3, Ch. 182, L. 1975; R.C.M. 1947, 41-1714.

50-71-304 through 50-71-310 reserved.

50-71-311. Safety codes authorized. (1) The division may adopt, amend, repeal, and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe.

(2) In the performance of its duties, the division may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees and others to suggest safety codes or amendments thereto.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).

50-71-312. Codes to be consistent with other safety codes. (1) All such safety codes and rules shall, when adopted, be not inconsistent with the then-existing widely accepted codes of such engineering bodies as the American society of mechanical engineers, the American standards association, the American society of safety engineers, the United States of America standards institute, the national fire protection association and, in addition, agencies of the federal government with responsibilities for administering worker safety programs and other accepted codes.

(2) Any amendments made to such codes by the division shall be such that, when amended, such code shall be consistent with the widely accepted safety codes as then existing.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).

50-71-313. Effective date of codes. All codes and all amendments thereto and repeals thereof shall take effect 30 days after certified copies thereof shall be filed in the office of the secretary of state.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).

50-71-314. Codes to be published. Every code adopted and every amendment or repeal thereof shall be published in such manner as the division may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the division under the provisions of this chapter, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(2).

50-71-315. Variations to code. (1) In case of practical difficulties, the division may grant variations from particular provisions of the code and permit the use of other or different devices or methods. However, such variations shall be granted only when it is clear that the reasonable safety of the workers in the plant or place of employment is not thereby endangered.

(2) In any case where the division shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this chapter.

(3) A properly indexed record of all variations made shall be kept in the office of the division and be open to public inspection.

History: En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part).

50-71-316. Assistance in compliance. Any employer may consult with the division for advice and assistance in complying with the provisions of this chapter or any codes adopted hereunder.

History: En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part).

50-71-317 through 50-71-320 reserved.

50-71-321. Periodic inspections. (1) The division shall inspect from time to time all the places of employment defined in the Montana Workers' Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the division and a copy thereof given the employer. Such report shall not be open to public inspection or made public except on order of the division or by the division in the course of a hearing or proceeding.

History: En. Sec. 18, Ch. 341, L. 1969; amd. Sec. 14, Ch. 182, L. 1975; R.C.M. 1947, 41-1725.

50-71-322. Procedure for worker to report safety violation. (1) A worker shall notify the worker's employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the worker.

(2) If the employer fails to remedy the violation, the worker may complain in writing to the division of the violation.

(3) Upon receiving the complaint, the division shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969; amd. Sec. 15, Ch. 182, L. 1975; R.C.M. 1947, 41-1726.

50-71-323. Order directing additions, repairs, and improvements. (1) Whenever the division, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe or that the practices or methods or operations or processes employed or used in connection therewith are unsafe or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the division shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment.

(2) The division may in the order direct that such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to render such employment or places of employment safe in the manner and within the time specified in the order.

History: **En. Sec. 10, Ch. 341, L. 1969; amd. Sec. 6, Ch. 182, L. 1975; R.C.M. 1947, 41-1717.**

50-71-324. Time allowed for compliance with order. The division shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the division for an extension of time, which the division shall grant if it finds the extension of time necessary.

History: **En. Sec. 12, Ch. 341, L. 1969; amd. Sec. 8, Ch. 182, L. 1975; R.C.M. 1947, 41-1719.**

50-71-325. Division authorized to prohibit further use of equipment constituting violation. (1) The division, upon finding any violation of any duly adopted safety code, order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the division or who fails or refuses to file a report of accident as required by 39-71-307(1) is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than $1,000. This civil penalty may be imposed and collected by the division in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the division of workers' compensation earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the division within 20 days after entry of such order. The division shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply.

History: **En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(1) thru (4); amd. Sec. 23, Ch. 37, L. 1979.**

50-71-326. Injunction authorized. In addition to all other remedies provided in this chapter, the division may bring an action to enjoin any violation of any duly adopted safety order, code, or rule.

History: **En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(5).**

50-71-327. Division authorized to order closure or cessation of work. (1) The division may order any place of employment closed or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation, or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workers employed therein.

(2) Upon issuance of any such order, the division shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the division. Not more than 24 hours after the commencement of the hearing and without adjournment thereof, the division shall affirm, modify, or set aside the order.

(3) Nothing in this section shall empower the division to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that, for those employments or places of employment for which no code has been adopted and where it is found by the division that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers there employed, the division may order that portion of the plant, installation, or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed 4 hours unless such period be extended by order of the division.

History: **En. Sec. 13, Ch. 341, L. 1969; amd. Sec. 9, Ch. 182, L. 1975; R.C.M. 1947, 41-1720.**

50-71-328 through 50-71-330 reserved.

50-71-331. Right to apply for rehearing. Any party aggrieved directly or indirectly by any final order, decision, or rule of the division made or entered pursuant to this chapter may apply to the division, within 20 days after the order of the division, for rehearing in respect to any matters determined or covered by such final order, decision, or rule and specified in the application for hearing within the time and in the manner prescribed in this chapter.

History: **En. Sec. 15, Ch. 341, L. 1969; amd. Sec. 11, Ch. 182, L. 1975; R.C.M. 1947, 41-1722.**

50-71-332. Application for rehearing. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision, or rule is unjust or unlawful and every issue to be considered by the division.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within 10 days after being served.

(4) If there are no adverse parties, the application may be heard ex parte or the division may require the application for rehearing to be served on such parties as may be designated by the division.

History: En. Sec. 16, Ch. 341, L. 1969; amd. Sec. 12, Ch. 182, L. 1975; R.C.M. 1947, 41-1723.

50-71-333. Disposition of application for rehearing. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the division, it may determine the same by confirming without hearing its previous determination or, if a rehearing is necessary to determine one or more of the issues raised, the division shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties, and such other persons as the division may order.

(3) If, after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the division shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted or should be changed, the division shall abrogate, change, or modify the same.

(4) An order or decision made after the rehearing abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the division.

(5) An application for rehearing is considered denied by the division unless it has been acted upon within 30 days from the date of filing; provided that the division may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional 30 days.

History: En. Sec. 17, Ch. 341, L. 1969; amd. Sec. 13, Ch. 182, L. 1975; R.C.M. 1947, 41-1724.

50-71-334. Judicial review. (1) The orders of the division, its rules, findings, and decisions made and entered under the provisions of this chapter may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within 30 days after an application for rehearing is denied or, if the application is granted, within 30 days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction, it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the division and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney, and a copy thereof shall be served by certified mail upon the division.

(4) Within 10 days after the receipt of the notice, the division shall file with the clerk of court the record of proceedings before the division, including a transcript of all the evidence adduced upon the hearing and any rehearing before the division. The district court, on application for good cause

shown, may extend the time within which the division shall file the record, transcript, and evidence.

(5) The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the division.

(6) The appeal shall not be extended further than to determine whether or not:

(a) the division acted without or in excess of its powers or in violation of the law;

(b) the order or decision was procured by fraud;

(c) the order, decision, or rule is unreasonable;

(d) if findings of fact are made, the finding of fact supports the order or decision under review.

(7) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: En. Sec. 14, Ch. 341, L. 1969; amd. Sec. 10, Ch. 182, L. 1975; R.C.M. 1947, 41-1721.

CHAPTER 72

SAFETY IN MINES OTHER THAN COAL MINES

Part 1 — General Provisions

Section

50-72-101. Applicability of chapter.
50-72-102. Definitions.
50-72-103. Injunctions and other civil relief authorized.
50-72-104. Violations a misdemeanor.

Part 2 — Inspections and Investigations

50-72-201. Inspectors.
50-72-202. Inspections and investigations authorized.
50-72-203. Inspectors and investigators to have free access to mines.
50-72-204. Debarment of persons from mine when death or serious injury likely.
50-72-205. Procedure when noncompliance not likely to cause death or serious injury.
50-72-206. Requirements as to findings, notices, and orders.
50-72-207. Notice or order subject to annulment, cancellation, or revision.
50-72-208. Order subject to review.
50-72-209. Right to hearing.
50-72-210. Actions or decisions under part to be taken as rapidly as possible.

Part 1

General Provisions

50-72-101. Applicability of chapter. This chapter shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the division, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of persons employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R.C.M. 1921; re-en. Sec. 3425, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1971; amd. Sec. 22, Ch. 182, L. 1975; R.C.M. 1947, 50-108.

50-72-102. Definitions. (1) "Authorized representative" means mine inspector or any other person employed or authorized by the division to perform any and all duties under this chapter.

(2) "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties, including the capacity of succession.

(3) "Division" means the division of workers' compensation of the state of Montana.

(4) "Employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as hereinafter defined, in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise.

(5) "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written.

(6) "Inspector" means a person employed by the division to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this chapter.

(7) "Mine" means any mine or excavation when clay, metallic ore, mineral, gypsum, or rock is dug or mined, whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground.

(8) "Notice" means a written notice, work order, or correction notice issued by an authorized representative of the division, which notice specifies a violation and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation.

(9) "Occupational health" means any of those health conditions that occur as a result of employment in a mine.

(10) "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the division or any other determination or decision made by the division.

History: En. 50-119 by Sec. 5, Ch. 310, L. 1971; amd. Sec. 24, Ch. 182, L. 1975; R.C.M. 1947, 50-119.

50-72-103. Injunctions and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office whenever an operator:

(1) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(2) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the division to any mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(5) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter.

History: **En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(a).**

50-72-104. Violations a misdemeanor. (1) Any person who knowingly:

(a) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the division to any mine which is subject to this chapter;

(d) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter, shall be guilty of a misdemeanor and shall upon conviction thereof be punished for each such offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits such offense to be committed shall upon conviction be subject to the same fine or imprisonment, or both.

History: **En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(b).**

Part 2

Inspections and Investigations

50-72-201. Inspectors. The division of workers' compensation shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this chapter and shall prescribe their powers, duties, and responsibilities.

History: **En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R.C.M. 1921; re-en. Sec. 3418, R.C.M. 1935; amd. Sec. 1, Ch. 310, L. 1971; amd. Sec. 20, Ch. 182, L. 1975; R.C.M. 1947, 50-101.**

50-72-202. Inspections and investigations authorized. The division is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this chapter:

(1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein; and

(2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(a).

50-72-203. Inspectors and investigators to have free access to mines. For the purpose of making any inspection or investigation authorized by this chapter, authorized representatives of the division shall have the right of entry to, upon, or through any mine which is subject to this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(b).

50-72-204. Debarment of persons from mine when death or serious injury likely. If, upon any inspection of a mine which is subject to this chapter, authorized representatives of the division find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists and thereupon issue an order requiring the operator of such mine to cause all persons to be withdrawn from and to be debarred from entering such area, except the persons designated below whose presence in such area is necessary to eliminate the danger described in such order:

(1) any person whose presence in such area is necessary in the judgment of the operator of the mine to eliminate the danger described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(c).

50-72-205. Procedure when noncompliance not likely to cause death or serious injury. (1) If, upon any inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation.

(2) If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation. Thereupon, the division shall make an order requiring the operator of such mine to cause all persons in such area to be withdrawn from and to be debarred from entering such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order:

(a) any person whose presence in such area is necessary in the judgment of the operator of the mine to abate the violation described in the order;

(b) any public official whose official duties require him to enter such area;

(c) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(d).

50-72-206. Requirements as to findings, notices, and orders. (1) Findings and orders issued pursuant to this part shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(2) Each finding made and notice or order issued under this part shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing and shall be signed by the person making them.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part).

50-72-207. Notice or order subject to annulment, cancellation, or revision. A notice or order issued by an authorized representative pursuant to this part may be annulled, canceled, or revised by the authorized representative, and in case of a division order, the division may annul, cancel, or revise the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part).

50-72-208. Order subject to review. The order of the duly authorized representative of the division shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(g).

50-72-209. Right to hearing. (1) An operator notified of an order made pursuant to 50-72-204 may apply to the division for a hearing, revision, or annulment of such order. Whenever the division after such a hearing, upon complaint or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings revising or annulling the order under review.

(2) An operator notified of an order made pursuant to 50-72-205 may apply to the division for a hearing or revision of such order. If the division finds that there was no violation, it shall make an order annulling the order under review. If the division finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the division finds that such violation was not totally abated, it shall make an order consistent with its findings.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(h), (i).

50-72-210. Actions or decisions under part to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the division under this part, all actions which the division or its authorized representatives are required to take under this part shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(j).

CHAPTER 73

SAFETY IN COAL MINES

Part 1 — General Provisions

Section
50-73-101. Short title.
50-73-102. Definitions.
50-73-103. Division authorized to adopt rules.
50-73-104. Injunction and other civil relief authorized.
50-73-105. Violations a misdemeanor.

Part 2 — Maps, Surveys, and Boundary Lines

50-73-201. Operator to make map of coal mine.
50-73-202. Map of the surface.
50-73-203. Map of underground working.
50-73-204. Map for every seam.
50-73-205. Copies of maps for division.
50-73-206. Maps to be updated on basis of semiannual surveys.
50-73-207. Annual surveys in mines having only five men on shift.
50-73-208. Final survey and map update when mine abandoned or worked out.
50-73-209. Procedure when operator fails to furnish or update map.
50-73-210. Restrictions as to boundary lines.

Part 3 — Duties of Operator and Employees in Mine Operation

50-73-301. Operator to report amount of coal produced.
50-73-302. Hoisting — licensing of hoisting engineers.
50-73-303. Nonpermissible internal-combustion engines.
50-73-304. Owner to provide and maintain airways.
50-73-305. Specific prohibitions and safety precautions.
50-73-306. Operator to give notice of happening of certain occurrences.
50-73-307. Operator to make and preserve a record of all injuries.
50-73-308. Operator to notify miners' organization of mine fatality.

Part 4 — Inspections, Investigations, and Compliance

50-73-401. Coal mine inspector.
50-73-402. Division authorized to enter and inspect coal mines.
50-73-403. Division to give notice of inspection to be made on complaint.
50-73-404. Right of employees' representative and mine owner to accompany division during inspection.
50-73-405. Mine owner to furnish means necessary for inspection.
50-73-406. Minimum inspection intervals.
50-73-407. Division to give notice of violations and penalties therefor.
50-73-408. Procedure when notice of violations disregarded.
50-73-409. Division to post statement of conditions at some conspicuous location.
50-73-410. Division inspection upon advisement of accident, injury, or fatality.
50-73-411. Miners' organization authorized to investigate fatal accident.
50-73-412. Debarment of persons from mine when death or serious injury likely.
50-73-413. Procedure when noncompliance not likely to cause death or serious injury.
50-73-414. Requirements as to findings, notices, and orders.
50-73-415. Notice or order subject to annulment, cancellation, or revision.
50-73-416. Order subject to review.
50-73-417. Right to hearing.
50-73-418. Actions or decisions under chapter to be taken as rapidly as possible.

Part 1

General Provisions

50-73-101. Short title. This chapter shall be known and may be cited as the "Montana Coal Mining Code".

History: En. Sec. 1, Ch. 120, L. 1911; re-en. Sec. 3447, R.C.M. 1921; re-en. Sec. 3447, R.C.M. 1935; amd. Sec. 1, Ch. 267, L. 1974; R.C.M. 1947, 50-401.

50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702 and the state coal mine inspectors employed by the division.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Following shot" means a shot which is dependent in its action on the result of another shot.

(4) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

(5) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(6) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(7) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(8) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(9) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(10) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

History: En. 50-401.1 by Sec. 2, Ch. 267, L. 1974; R.C.M. 1947, 50-401.1.

50-73-103. Division authorized to adopt rules. The division may adopt rules to carry out the provisions of this chapter and safety standards for all coal mines in this state.

History: En. 50-412.1 by Sec. 8, Ch. 267, L. 1974; R.C.M. 1947, 50-412.1.

50-73-104. Injunction and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by the division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office when an operator:

(1) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(2) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the division to a mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(5) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(1).

50-73-105. Violations a misdemeanor. (1) A person who knowingly:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the division to a mine;

(d) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In an instance in which the offense is committed by a corporation, an officer or authorized representative of the corporation who knowingly permits the offense to be committed is subject to the same fine or imprisonment, or both.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(2).

Part 2

Maps, Surveys, and Boundary Lines

50-73-201. Operator to make map of coal mine. Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of the mines, drawn to a scale of not less than 200 feet to 1 inch and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the certified engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911; re-en. Sec. 3479, R.C.M. 1921; re-en. Sec. 3479, R.C.M. 1935; amd. Sec. 9, Ch. 267, L. 1974; R.C.M. 1947, 50-428.

50-73-202. Map of the surface. Every map or plan or, at the option of the operator, a separate map shall show the surface boundary lines contiguous to the workings and pertaining to each mine, all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the boundary lines; and in all cases, if of an underground mine, it shall be drawn on a transparency so that it can be laid upon the map of the underground workings and indicate the relative location of the lines and objects on the surface to the excavations of the mine.

History: En. Sec. 40, Ch. 120, L. 1911; re-en. Sec. 3482, R.C.M. 1921; re-en. Sec. 3482, R.C.M. 1935; amd. Sec. 12, Ch. 267, L. 1974; R.C.M. 1947, 50-431.

50-73-203. Map of underground working. For the underground working, the map shall show all power distribution and ventilation in mines and all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and fire walls; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911; re-en. Sec. 3480, R.C.M. 1921; re-en. Sec. 3480, R.C.M. 1935; amd. Sec. 13, Ch. 185, L. 1949; amd. Sec. 10, Ch. 267, L. 1974; amd. Sec. 7, Ch. 39, L. 1977; R.C.M. 1947, 50-429.

50-73-204. Map for every seam. A separate and similar map for all active mining areas drawn to the same scale in all cases shall be made of every seam which shall be worked in any mine, and the maps of all seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting them.

History: En. Sec. 39, Ch. 120, L. 1911; re-en. Sec. 3481, R.C.M. 1921; re-en. Sec. 3481, R.C.M. 1935; amd. Sec. 11, Ch. 267, L. 1974; R.C.M. 1947, 50-430.

50-73-205. Copies of maps for division. The original or true copies of all maps shall be kept in the office at the mine, and true copies shall also be furnished the division within 30 days after their completion. The maps delivered to the division shall become the property of the state. They shall be kept at the office of the division and be open to inspection by all persons interested in them. An examination shall only be made in the presence of a division inspector, and he shall not permit any copies of them to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

History: En. Sec. 41, Ch. 120, L. 1911; re-en. Sec. 3483, R.C.M. 1921; re-en. Sec. 3483, R.C.M. 1935; amd. Sec. 13, Ch. 267, L. 1974; R.C.M. 1947, 50-432.

50-73-206. Maps to be updated on basis of semiannual surveys. An extension of the last preceding survey of every mine in active operation shall be made once every 6 months, and the result of the survey, with the date, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine and all extensions of the workings to the most advanced boundary of the workings which have been made since the preceding survey. The changes and extensions shall be entered on the copies of the maps of the division or new copies furnished it within 30 days after the last survey is made.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part).

50-73-207. Annual surveys in mines having only five men on shift. The division shall require an extension of the last preceding survey once every 12 months of every mine in active operation in which five men or less are employed on any one shift.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(2).

50-73-208. Final survey and map update when mine abandoned or worked out. (1) When a coal mine is worked out, is about to be abandoned, or indefinitely closed, the operator shall make or cause to be made a final survey of all available parts of the mine, and the results shall be duly extended on all maps and copies of the mine to show all excavations and the most advanced workings of the mine and their exact relations to the boundary or section lines on the surface.

(2) The division may order a survey to be made of the workings of a mine which is about to be abandoned or of which it has reason to believe the maps are inaccurate whenever in its judgment the safety of the workers, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. The survey shall be at the expense of the state.

History: En. Sec. 43, Ch. 120, L. 1911; re-en. Sec. 3485, R.C.M. 1921; re-en. Sec. 3485, R.C.M. 1935; amd. Sec. 15, Ch. 267, L. 1974; R.C.M. 1947, 50-434.

50-73-209. Procedure when operator fails to furnish or update map. When the operator of a mine neglects or refuses or for any cause not satisfactory to the division fails for a period of 3 months to furnish the division the map or plan of the mine or of the extension or a copy, the division may make or cause to be made an accurate map or plan of the mine at the expense of the owner or lessee, and the cost may be recovered from the owner, lessee, or operator in the same manner as other debts by suit in the name of the state.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part).

50-73-210. Restrictions as to boundary lines. In no case shall the workings of a coal mine be driven nearer than 50 feet to the boundary line of the coal rights pertaining to the mine, except for the purpose of establishing connecting workings between properties owned by the same person or an underground communication between contiguous mines as provided for elsewhere in rules adopted by the division.

History: En. 50-434.1 by Sec. 16, Ch. 267, L. 1974; R.C.M. 1947, 50-434.1.

Part 3

Duties of Operator and Employees in Mine Operation

50-73-301. Operator to report amount of coal produced. Within 15 days after the close of each calendar month, the operator of a coal mine shall report to the division the tons of coal produced each day during the preceding month.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part).

50-73-302. Hoisting — licensing of hoisting engineers. Hoisting of personnel and licensing of hoisting engineers shall be performed in mines under the provisions of the law and rules and standards adopted by the division.

History: En. 50-479 by Sec. 22, Ch. 267, L. 1974; R.C.M. 1947, 50-479.

50-73-303. Nonpermissible internal-combustion engines. Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes may not be permitted underground in any coal mine.

History: En. 50-567.1 by Sec. 17, Ch. 267, L. 1974; R.C.M. 1947, 50-467.1.

50-73-304. Owner to provide and maintain airways. The owner, lessee, or operator of every coal mine shall provide and maintain airways of sufficient dimensions, and in no case shall the area of the aircourse be less than 25 square feet in mines operated in any underground system.

History: En. Sec. 69, Ch. 120, L. 1911; re-en. Sec. 3511, R.C.M. 1921; re-en. Sec. 3511, R.C.M. 1935; amd. Sec. 18, Ch. 267, L. 1974; R.C.M. 1947, 50-468.

50-73-305. Specific prohibitions and safety precautions. (1) A person may not enter a mine which is generating firedamp in great enough quantities to be detected by a safety lamp until the mine examiners make a report to the division.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation may not reenter the mine until given permission to do so by the mine foreman.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates on any caution board, erase or change the dates at room or entry face when made by the mine examiner, take for his use a life check not issued to him under rules adopted by the division, change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire into an underground mine, except as provided for in rules adopted by the division.

(6) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, aircourse, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it, endanger the miners or those working therein, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery.

History: En. 50-476 by Sec. 19, Ch. 267, L. 1974; amd. Sec. 8, Ch. 39, L. 1977; R.C.M. 1947, 50-476.

50-73-306. Operator to give notice of happening of certain occurrences. Immediate notice must be conveyed to the division by the operator interested:

(1) when an accident occurs whereby a person receives serious or fatal injury;

(2) when work is commenced to sink a shaft, slope, or drift either for hoisting or escape purposes;

(3) when there is intent to abandon a mine or to reopen an abandoned mine;

(4) upon the appearance of a large body of firedamp in a mine, whether accompanied by explosion or not, and upon the occurrence of a serious fire within the mine or on the surface around the mine;

(5) when the workings of a mine are approaching near an abandoned mine believed to contain accumulation of water or gas; or

(6) upon the accidental closing or intended abandonment of a regularly established passageway to an escape outlet.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part).

50-73-307. Operator to make and preserve a record of all injuries. Every operator of a coal mine or his agent shall make and preserve for the information of the division, upon uniform blanks furnished by the division, a record of all injuries sustained by any employees on the premises.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-308. Operator to notify miners' organization of mine fatality. The operator shall, upon being notified of a fatality in a coal mine, relay that information promptly to the district office of the miners' organization.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

Part 4

Inspections, Investigations, and Compliance

50-73-401. Coal mine inspector. (1) The division shall appoint state coal mine inspectors for the enforcement of this chapter.

(2) A person is not eligible to be a state coal mine inspector unless he is a citizen of the United States, a resident of this state, has been actually employed in coal mining 5 years before his appointment, and holds a mine foreman's certificate and a mine inspector's certificate from this state.

(3) A state coal mine inspector may not act as agent for a corporation, superintendent, or manager of a mine and shall in no manner be in the employ of mining companies, nor shall he be interested in any way in coal mining operations, either as owner, lessee, or otherwise.

History: (1)En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921; re-en. Sec. 3448, R.C.M. 1921; re-en. Sec. 3448, R.C.M. 1935; amd. Sec. 3, Ch. 267, L. 1974; Sec. 50-402, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1911; re-en. Sec. 3449, R.C.M. 1921; re-en. Sec. 3449, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1949; amd. Sec. 4, Ch. 267, L. 1974; Sec. 50-403, R.C.M. 1947; (3)En. Sec. 6, Ch. 120, L. 1911; re-en. Sec. 3451, R.C.M. 1921; re-en. Sec. 3451, R.C.M. 1935; amd. Sec. 6, Ch. 267, L. 1974; Sec. 50-405, R.C.M. 1947; R.C.M. 1947, 50-402, 50-403, 50-405.

50-73-402. Division authorized to enter and inspect coal mines. (1) The division may enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state and the workings and the machinery belonging thereto at all reasonable times either by day or night, but not so as to impede or obstruct the workings of the mine.

(2) The division may at any time perform such inspections and investigations as it considers necessary in surface and underground mines which are subject to this chapter for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein and for the purpose of determining

whether there is compliance with a health and safety standard or order issued under this chapter.

(3) For the purpose of making an inspection or investigation authorized by this chapter, representatives of the division may enter, upon or through, any mine which is subject to this chapter.

History: (1)En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; Sec. 50-404, R.C.M. 1947; (2), (3)En. 50-480, 50-480.1 by Secs. 23, 24, Ch. 267, L. 1974; Secs. 50-480, 50-480.1, R.C.M. 1947; R.C.M. 1947, 50-404(1), 50-480, 50-480.1.

50-73-403. Division to give notice of inspection to be made on complaint. If the division has in its possession any complaint to the effect that this chapter is being violated, it shall notify the employer and the employees that it is about to make an inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-404. Right of employees' representative and mine owner to accompany division during inspection. The employees' representative has the right to accompany the division in making an official mine inspection. The owner or operator has the right to personally accompany the division while inspecting his property or to designate someone to accompany the division.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-405. Mine owner to furnish means necessary for inspection. The owner, lessee, operator, superintendent, or mining boss of the mine is required to furnish the means necessary for the entry, inspection, examination, inquiry, and exit.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-406. Minimum inspection intervals. The division shall carefully examine all the coal mines in operation in this state at least every 3 months and more often if necessary to see that every precaution is taken to insure the safety of all workers that may be engaged in the coal mine. The division shall make a record of the visit, noting the time and the material circumstances of the inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-407. Division to give notice of violations and penalties therefor. The division shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state and the penalty thereby imposed for those violations.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-408. Procedure when notice of violations disregarded. (1) If the notice provided for in 50-73-407 is disregarded, the division may stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found.

(2) However, where conditions justify the division in so doing, it may grant a reasonable length of time for making repairs or for putting the mine in proper condition, but the number of workers employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition.

(3) Where any stops or cessation of work is enforced, the division may thereafter allow the mine or part of a mine to be reopened when the dangerous or unlawful conditions existing there are removed or remedied so that they no longer exist.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-409. Division to post statement of conditions at some conspicuous location. The division shall post in some conspicuous location at each mine visited and inspected by it a plain statement of the conditions of the mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine. The statement, signed by the division inspector, shall give the date of inspection. Where a local union has jurisdiction over the mine inspected, the division shall post three copies of the statement of conditions within 1 week after making the inspection. It shall also post a copy at the landing used by the workers stating what number of workers may be permitted to ride on the cage, car, or cars at one time.

History: En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R.C.M. 1921; re-en. Sec. 3453, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1945; amd. Sec. 3, Ch. 185, L. 1949; amd. Sec. 7, Ch. 267, L. 1974; R.C.M. 1947, 50-407.

50-73-410. Division inspection upon advisement of accident, injury, or fatality. (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the division shall, if it considers it necessary from the facts reported and in all cases of loss of life, immediately have an inspector go to the scene of the accident within 48 hours of notification.

(2) The division may also make any original or supplementary investigation which it considers necessary as to the nature and cause of an accident and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team shall include a division coal mine inspector, the employer or his designee, and a representative of the employees.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-411. Miners' organization authorized to investigate fatal accident. The representative of the miners' organization or some person delegated by him may enter any coal mine for the purpose of investigating the causes of a fatal accident.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-412. Debarment of persons from mine when death or serious injury likely. If, upon an inspection of a mine, the division finds that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the division shall determine the extent of the area of the mine throughout which the danger exists and order the operator of the mine to have all persons withdrawn from and excluded from entering the area, except the persons designated below whose presence in the area is necessary to eliminate the danger described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to eliminate the danger;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.2 by Sec. 25, Ch. 267, L. 1974; R.C.M. 1947, 50-480.2.

50-73-413. Procedure when noncompliance not likely to cause death or serious injury. If upon an inspection or investigation the division finds that there has been a failure to comply with a mandatory standard which is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the imminence of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the division finds that the violation has not been totally abated and if it also finds that the period of time should not be further extended, it shall also find the extent of the area which is affected by the violation. The division shall order the operator of the mine to have all persons in the area to be withdrawn from and excluded from entering the area, excepting the following persons whose presence in the area is necessary to abate the violation described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to abate the violation;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.3 by Sec. 26, Ch. 267, L. 1974; R.C.M. 1947, 50-480.3.

50-73-414. Requirements as to findings, notices, and orders. (1) Findings and orders issued under this chapter shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and excluded.

(2) Each finding made and notice or order issued by the division shall be given promptly to the operator of the mine to which it pertains, and all the findings, orders, and notices shall be in writing and shall be signed by the division inspector making them.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part).

50-73-415. Notice or order subject to annulment, cancellation, or revision. A notice or order issued by the division under this chapter may be amended, canceled, or revised by the division.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part).

50-73-416. Order subject to review. The order of the division shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. 50-480.5 by Sec. 28, Ch. 267, L. 1974; R.C.M. 1947, 50-480.5.

50-73-417. Right to hearing. (1) An operator notified of an order made under 50-73-412 may apply to the division for a hearing, revision, or amendment of the order. When the division after a hearing upon complaint or upon its own motion finds that danger throughout the area of the mine as set out in the order existed at the time of making the inspection, it shall make an order denying a revision or amendment. However, if it finds that the danger did not exist throughout the area of the mine, it shall make an order consistent with its findings, revising or amending the order under review.

(2) An operator notified of an order made under 50-73-413, as amended, may apply to the division for a hearing or revision of the order. If the division finds that there was no violation, it shall make an order rescinding the order under review. If the division finds that there was a violation but the violation has since been abated, it shall make an order rescinding the order under review. If the division finds that the violation was not totally abated, it shall make an order consistent with its findings.

History: (1)En. 50-480.6 by Sec. 29, Ch. 267, L. 1974; Sec. 50-480.6, R.C.M. 1947; (2)En. 50-480.7 by Sec. 30, Ch. 267, L. 1974; amd. Sec. 9, Ch. 39, L. 1977; amd. Sec. 5, Ch. 187, L. 1977; Sec. 50-480.7, R.C.M. 1947; R.C.M. 1947, 50-480.6, 50-480.7.

50-73-418. Actions or decisions under chapter to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the division under this chapter, all actions which the division is required to take under this chapter shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

History: En. 50-480.8 by Sec. 31, Ch. 267, L. 1974; R.C.M. 1947, 50-480.8.

CHAPTER 74

BOILERS AND STEAM ENGINES

Part 1 — General Provisions

Section
50-74-101. Division to formulate rules.
50-74-102. Boilers to conform to rules.

50-74-103. Boilers exempted.
50-74-104. Dinkey engines to be classed as traction engines.
50-74-105. Purchaser to notify division of purchase.
50-74-106. Certificate and license to be conspicuously displayed.
50-74-107. Wrongful certification or granting of a license a misdemeanor.
50-74-108. Tampering with safety valve a misdemeanor.

Part 2 — Inspections

50-74-201. State boiler inspectors.
50-74-202. Special boiler inspectors.
50-74-203. Qualifications of boiler inspectors.
50-74-204. Joint or separate inspection authorized — inspectors to certify inspection under seal.
50-74-205. Purchaser to receive certificate of inspection.
50-74-206. Boiler to be inspected prior to use — duty of notification.
50-74-207. Boiler opened for repair subject to inspection — duty of notification.
50-74-208. Penalty for operation without certificate or failure to give notice.
50-74-209. Required inspection intervals.
50-74-210. Duty to permit inspection.
50-74-211. Inspector to notify division of refused access.
50-74-212. Payment of costs resulting from refused access.
50-74-213. Failure to comply with division directed access a misdemeanor.
50-74-214. Engineer to assist in inspection.
50-74-215. Interior and exterior examination of boiler.
50-74-216. Hydrostatic pressure test.
50-74-217. Other inspection requirements.
50-74-218. Safe working pressure.
50-74-219. Fee for special inspection.

Part 3 — Licenses

50-74-301. License required to operate boilers and steam engines.
50-74-302. General requirements for licensure.
50-74-303. Engineer's license classifications.
50-74-304. Requirements for engineer's license.
50-74-305. Exceptions to requirements for engineer's license.
50-74-306. Traction licenses.
50-74-307. Requirements for traction licenses.
50-74-308. Waiver of experience requirement for traction licenses.
50-74-309. License fees.
50-74-310. Application to be accompanied by one-half of license fee.
50-74-311. Waiting period before reexamination permitted.
50-74-312. Review of license rejection.
50-74-313. Renewal of licenses.
50-74-314. Complaints and revocation of license.
50-74-315. Unlawful to operate boiler or steam engine without license.
50-74-316. Unlawful to employ unlicensed operator.
50-74-317. When unlicensed person may operate.

Part 1

General Provisions

50-74-101. Division to formulate rules. The division of workers' compensation shall formulate definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(1).

50-74-102. Boilers to conform to rules. No boiler which does not conform to the rules adopted by the division governing new construction and installation shall be installed and operated in this state after 12 months from the date upon which the first rules under this chapter pertaining to new construction and installation shall have become effective unless the boiler is of special design or construction, is not covered by the rules, or is in any way inconsistent with such rules, in which case a special installation and operating permit may be granted by the division at its discretion.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919, re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(3).

50-74-103. Boilers exempted. (1) This chapter shall not apply to boilers under federal control.

(2) The provisions of this chapter requiring inspections, inspection fees, and certificates shall not apply to steam heating boilers operated at not over 15 pounds per square inch gauge pressure in private residences or apartments of six or less families or to hot water heating or supply boilers operated at not over 50 pounds per square inch gauge pressure and temperatures not over 250 degrees F when in private residences or apartments of six or less families.

(3) No persons operating any of the engines or boilers exempted from the operation of this chapter shall be required to procure a license from the division.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-104. Dinkey engines to be classed as traction engines. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads or any similar work where such locomotives are owned, leased, or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation and not for general commercial purposes shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-105. Purchaser to notify division of purchase. (1) Any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of 50-74-103 shall, within 10 days after such purchase, report the fact of such purchase to the division and shall notify the division as to where the boiler will be installed and operated.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-106. Certificate and license to be conspicuously displayed. All certificates of inspection, operating certificates, and engineer's licenses must be displayed in a conspicuous place in the boiler room.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-107. Wrongful certification or granting of a license a misdemeanor. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments or grants a license to any person to act as engineer contrary to the provisions of this chapter is guilty of a misdemeanor.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-108. Tampering with safety valve a misdemeanor. A renter, user, or owner of a boiler or a person who tampers with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate is guilty of a misdemeanor.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(2).

Part 2

Inspections

50-74-201. State boiler inspectors. The division shall appoint state inspectors of boilers and shall prescribe their duties and term of office and fix their compensation.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(2).

50-74-202. Special boiler inspectors. (1) In addition to the state boiler inspectors, the division shall issue to the inspectors of boiler insurance companies authorized to do business in the state commissions, certificates, or other recognition as special boiler inspectors and may accept the inspection reports of such special inspectors as equivalent to those of the state inspectors.

(2) Each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors.

(3) Such special inspectors shall receive no salary or expenses from the state, nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(3).

50-74-203. Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least 10 years of actual experience in the operation of steam engines, steam boilers, and steam machinery and who has not held for at least 3 years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R.C.M. 1921; amd. Sec. 2, Ch. 225, L. 1971; R.C.M. 1947, 69-1502.

50-74-204. Joint or separate inspection authorized — inspectors to certify inspection under seal. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector of boilers and safety.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-205. Purchaser to receive certificate of inspection. (1) Any person purchasing any boiler, whether traction or stationary, shall be entitled to receive from the seller the certificates of inspection issued on such boiler.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-206. Boiler to be inspected prior to use — duty of notification. (1) The inspector of boilers must inspect all boilers and steam generators before the same are used.

(2) All persons who bring into this state for operation in this state any boiler or boilers must notify the division stating the number and kind of boilers and where they are to be located and operated in this state and must secure from the division a certificate of inspection before boilers are placed in operation except in the case of new boilers, which must be inspected within 90 days after they are put in use.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-207. Boiler opened for repair subject to inspection — duty of notification. Any owner, operator, or user who opens a boiler or boilers between inspections for repair or other reasons must notify the division of such action, and such boiler or boilers shall at the discretion of the division be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-208. Penalty for operation without certificate or failure to give notice. Any person failing to give notice to the division as provided in 50-74-206 or 50-74-207 or who operates such boilers without a certificate from the division shall be punished by a fine of not less than $100 or more than $500 for each offense, by imprisonment in the county jail for not less than 30 or more than 90 days, or by both such fine and imprisonment.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-209. Required inspection intervals. (1) All boilers must be inspected at least once in every year except boilers exempt under provisions of 50-74-103. Upon written application, longer inspection intervals may be authorized by the division.

(2) In addition to the annual inspection, it is the duty of the inspectors to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 557, Pol. C. 1895; re-en. Sec. 1646, Rev. C. 1907; re-en. Sec. 2717, R.C.M. 1921; re-en. Sec. 2717, R.C.M. 1935; Sec. 69-1506, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1506.

50-74-210. Duty to permit inspection. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-211. Inspector to notify division of refused access. In case the owner, operators, or manager of any boiler is notified by the inspector to have the boiler ready for inspection on a certain day and fails to have such boiler ready for inspection at such time, the inspector shall notify the division to gain access to the boiler.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-212. Payment of costs resulting from refused access. The owner, engineer, or manager of any boiler who has refused access resulting in a division order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order in addition to the inspection fee provided by law.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-213. Failure to comply with division directed access a misdemeanor. Any person failing to immediately comply with division directed access to the boiler shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $500, by imprisonment in the county jail for not less than 2 months or more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-214. Engineer to assist in inspection. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-215. Interior and exterior examination of boiler. (1) The inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least 2 inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby; and that such boilers and the steam connections may be safely employed without danger to life.

(2) No boiler or steam pipe or any of the connections thereto which are made in whole or in part of bad material or are unsafe from any cause shall be approved. Nothing herein shall be construed to prevent the use of any boiler or steam generator, which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R.C.M. 1921; re-en. Sec. 2716, R.C.M. 1935; amd. Sec. 5, Ch. 225, L. 1971; Sec. 69-1505, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1505.

50-74-216. Hydrostatic pressure test. When necessary, the boiler inspector shall subject boilers, except those exempted by 50-74-103, to hydrostatic pressure, which hydrostatic pressure shall not exceed 150% of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-217. Other inspection requirements. The inspector must satisfy himself that:

(1) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and are properly adjusted so as not to allow a greater pressure in a boiler than the amount prescribed by the inspection certificate;

(2) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and

(3) adequate and certain provisions for an ample supply of water to feed the boiler at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the boiler when it is under pressure of steam.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(1).

50-74-218. Safe working pressure. (1) If a boiler is constructed with lap horizontal seams on the boiler, dome, or drum, a factor of 4 ½ shall be used in determining the safe working pressure allowed on the boiler.

(2) If a boiler is constructed with butt strap horizontal seams, a factor of four may be used in determining the safe working pressure.

(3) If a boiler rests on a side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used in determining the safe working pressure.

(4) If the horizontal lap seams of a boiler are exposed to the fire, a factor of five must be used in determining the safe working pressure.

(5) On new stay bolts, 7,500 pounds pressure per square inch is allowed. If the stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on them.

(6) On braces made of solid material, 8,000 pounds pressure per square inch is allowed. On welded braces or braces with only one crowfoot, 6,000 pounds pressure per square inch is allowed.

(7) No cast iron may be used in the construction or reinforcements of a boiler if the pressure allowed on the boiler is more than 100 pounds per square inch.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(3).

50-74-219. Fee for special inspection. Whenever, upon request of the owner or operator of any boiler, it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law shall be charged and collected by the division.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(1).

Part 3

Licenses

50-74-301. License required to operate boilers and steam engines. All boilers and steam engines, except as exempted in 50-74-103, come under the provisions of this chapter, and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-302. General requirements for licensure. No person may be granted a license to operate steam or water boilers and steam machinery under the provisions of this chapter who has not met the qualifications for licensing and been found to be competent by examination to perform the duties of an engineer.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; R.C.M. 1947, 69-1508(part).

50-74-303. Engineer's license classifications. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into four classes, namely: first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into four classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(1), (2).

50-74-304. Requirements for engineer's license. Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) An applicant for a low-pressure engineer's license must have at least 3 months' full-time experience in the operation of a boiler in this classification, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(2) An applicant for a third-class engineer's license must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(3) An applicant for a second-class engineer's license must:

(a) have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(b) hold a valid third-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

(4) An applicant for a first-class engineer's license must:

(a) have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification;

(b) hold a valid second-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(c) hold a valid third-class engineer's license and have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully passed a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(3).

50-74-305. Exceptions to requirements for engineer's license. Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the division, and found to be competent to operate a boiler and steam-driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the division may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other division-approved institution or training program in the classification for which he is applying may, at the discretion of the division, be credited with a maximum of 6 months' experience toward a first-, second-, or third-class engineer's license.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(4).

50-74-306. Traction licenses. (1) None of the licenses named in 50-74-303 entitle its holder to operate a traction engine.

(2) A person who is entrusted with the care and management of traction engines or boilers on wheels is required to pass an examination testing his competency to operate that class of machinery and procure a traction license.

(3) A traction license does not entitle its holder to operate any other class of steam machinery.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).

50-74-307. Requirements for traction licenses. An applicant for a traction engineer's license must have at least 6 months' full-time experience in the operation of steam traction engines, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a traction engine.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).

50-74-308. Waiver of experience requirement for traction licenses. The division, at its discretion, may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).

50-74-309. License fees. Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(1)	first class	$30
(2)	second class	$20
(3)	third class	$12
(4)	low pressure	$ 8
(5)	traction	$12
(6)	renewal of license	$ 4
(7)	replacement of lost certificate	$ 2

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(2).

50-74-310. Application to be accompanied by one-half of license fee. Each application shall be accompanied by a payment equal to 50% of the license fee for which application is being made. The payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(3).

50-74-311. Waiting period before reexamination permitted. In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before he can again be examined for license.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(4).

50-74-312. Review of license rejection. (1) If any person who has applied for a license under the provisions of this chapter and has been rejected feels aggrieved, he may, at any time after the lapse of 10 days and within 45 days after the date of his rejection, in writing set forth the causes of his grievance and request a division review. Such request must be addressed to the division and shall be signed by the rejected applicant.

(2) Within 2 days after receiving such request, the division shall notify the applicant in writing that on a certain day, which shall not be less than

5 or more than 30 days after the date the division receives the written request, the division shall review and evaluate the application.

(3) The applicant may appear in person at the review if he so desires. At least 2 days before the day set for the review, the applicant may designate in writing to the division the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review.

(4) After the review is completed, if the division decides that the applicant is entitled to the license he has applied for, the division shall without delay issue a license accordingly but, if the division rejects the applicant, it is a final rejection and he must not be granted another examination for the space of 45 days after such last rejection, when he may again apply as provided by 50-74-309 through 50-74-311.

History: (1) thru (3)En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R.C.M. 1921; re-en. Sec. 2724, R.C.M. 1935; amd. Sec. 12, Ch. 225, L. 1971; amd. Sec. 31, Ch. 182, L. 1975; Sec. 69-1513, R.C.M. 1947; (4)En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R.C.M. 1921; re-en. Sec. 2725, R.C.M. 1935; amd. Sec. 13, Ch. 225, L. 1971; amd. Sec. 32, Ch. 182, L. 1975; Sec. 69-1514, R.C.M. 1947; R.C.M. 1947, 69-1513, 69-1514.

50-74-313. Renewal of licenses. (1) All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided.

(2) Any engineer failing to renew his license as herein provided or within at least 30 days after the date of expiration shall be assessed the fee for the original license of the same grade before the license will be reissued.

(3) Any engineer failing to renew his license within 12 months of the date of expiration must reapply for an engineer's license as required by the provisions of 50-74-303 through 50-74-308.

(4) Any engineer whose license expired while such engineer was in the military or naval service of the United States shall have 90 days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R.C.M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971; R.C.M. 1947, 69-1516.

50-74-314. Complaints and revocation of license. Whenever complaint is made against an engineer holding a license that he, through negligence, want of skill, or inattention to duty, permitted his boiler to burn or otherwise become in bad condition or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the division to make a thorough investigation of the charge and upon satisfactory proof of such charge to revoke the license of the engineer.

History: En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R.C.M. 1921; amd. Sec. 9, Ch. 225, L. 1971; amd. Sec. 29, Ch. 182, L. 1975; R.C.M. 1947, 69-1510.

50-74-315. Unlawful to operate boiler or steam engine without license. (1) It is unlawful for any person in this state to operate a stationary boiler or steam engine or any boiler or steam engine other than engines and boilers exempted by the provisions of 50-74-103 without a license granted under the provisions of this chapter. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section.

(2) A person who operates a boiler or steam engine without first obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined no less than $50 or more than $100 or be imprisoned in the county jail for any term not to exceed 60 days, or both.

History: (1)En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; Sec. 69-1517, R.C.M. 1947; (2)En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; Sec. 69-1508, R.C.M. 1947; R.C.M. 1947, 69-1508(part), 69-1517(part).

50-74-316. Unlawful to employ unlicensed operator. It shall be unlawful, except as stated in 50-74-317, for any person, firm, or corporation to employ any person not duly licensed as an engineer within the meaning of this chapter to run or operate any of the boilers or engines subject to the provisions of this chapter.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part).

50-74-317. When unlicensed person may operate. (1) In case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may for 15 days employ any person of the age of 18 years or over whom he may consider competent to run the engine or boiler.

(2) Although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the division.

(3) The person so employing the unlicensed engineer shall immediately notify the division.

(4) No owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than 15 days in any one calendar year.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part).

CHAPTER 75

CONSOLIDATION OF BOILER, MINE, AND COAL MINE INSPECTORS

Part 1 — General Provisions

Section

50-75-101. Consolidation of boiler, mine, and coal mine inspectors.
50-75-102. Appointment of inspectors.
50-75-103. Salaries of inspectors.
50-75-104. Districting of state for purpose of boiler inspection.
50-75-105. Rules governing inspectors.
50-75-106. Inspection fees.
50-75-107. Laws continued in force.

Part 1

General Provisions

50-75-101. Consolidation of boiler, mine, and coal mine inspectors. The office of inspector of boilers, the office of inspector of mines, and the office of state coal mine inspector are hereby combined and placed under the general supervision of the division of workers' compensation.

History: En. Sec. 1, Ch. 92, L. 1917; amd. Sec. 1, Ch. 47, L. 1921; re-en. Sec. 3034, R.C.M. 1921; re-en. Sec. 3034, R.C.M. 1935; R.C.M. 1947, 50-901.

50-75-102. Appointment of inspectors. The division of workers' compensation shall appoint not to exceed four inspectors of boilers, one coal mine inspector, and two inspectors of quartz mines, all of whose terms of office shall be at the pleasure of the division.

History: En. Sec. 2, Ch. 92, L. 1917; amd. Sec. 2, Ch. 47, L. 1921; re-en. Sec. 3035, R.C.M. 1921; re-en. Sec. 3035, R.C.M. 1935; R.C.M. 1947, 50-902.

50-75-103. Salaries of inspectors. The officers shall receive such annual salaries to be fixed by the division of workers' compensation and approved by the governor, all of said officers to be paid monthly.

History: En. Sec. 3, Ch. 92, L. 1917; re-en. Sec. 3036, R.C.M. 1921; re-en. Sec. 3036, R.C.M. 1935; R.C.M. 1947, 50-903.

50-75-104. Districting of state for purpose of boiler inspection. The division of workers' compensation shall district the state for boiler inspection and shall assign one inspector of boilers to each such district and may from time to time change the boundaries of said districts and change said inspector of boilers to other districts.

History: En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part).

50-75-105. Rules governing inspectors. The division of workers' compensation shall adopt rules under which the inspectors of boilers, inspectors of mines, and coal mine inspectors shall perform their duties.

History: En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part); amd. Sec. 24, Ch. 37, L. 1979.

50-75-106. Inspection fees. All fees collected by the inspectors of boilers, the inspectors of mines, and the coal mine inspector shall remain the same in amounts as now fixed by law, and when same are collected they shall be paid into the state treasury and credited to the division of workers' compensation account in the earmarked revenue fund as other inspection fees of the workers' compensation division are now paid and credited.

History: En. Sec. 5, Ch. 92, L. 1917; re-en. Sec. 3038, R.C.M. 1921; re-en. Sec. 3038, R.C.M. 1935; R.C.M. 1947, 50-905.

50-75-107. Laws continued in force. All laws that now prescribe the qualifications, powers, and duties of the inspectors of boilers, inspectors of mines, and coal mine inspectors not inconsistent with the provisions of this chapter are hereby continued in full force and effect.

History: En. Sec. 55, Ch. 96, L. 1915; amd. Sec. 6, Ch. 92, L. 1917; re-en. Sec. 3039, R.C.M. 1921; re-en. Sec. 3039, R.C.M. 1935; R.C.M. 1947, 50-906(part); amd. Sec. 25, Ch. 37, L. 1979.

CHAPTER 76

HOISTING ENGINES

Part 1 — General Provisions

Section

50-76-101. Where chapter not to apply.
50-76-102. Hoisting engine license required.
50-76-103. Crane and hoist license required.
50-76-104. Application and fee for license.
50-76-105. Renewal and period of validity of license.
50-76-106. Revocation of license.
50-76-107. Scope of license.
50-76-108. Renewal of application by rejected candidate.
50-76-109. Violation of chapter a misdemeanor.
50-76-110. Crane inspector.

Part 1

General Provisions

50-76-101. Where chapter not to apply. (1) This chapter shall not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter shall not apply to forklifts and front-end and rear-end loaders.

History: (1)En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; Sec. 69-1603, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; Sec. 69-1601, R.C.M. 1947; R.C.M. 1947, 69-1601(5), 69-1603(2).

50-76-102. Hoisting engine license required. (1) (a) It is unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license therefor from the division.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section shall not apply to hoists and cranes defined in 50-76-103.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; R.C.M. 1947, 69-1601(1) thru (4).

50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above 6 tons and a boom length of more than 25 feet without first obtaining a license from the division. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 shall apply to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class hoisting engineer's license shall have:

(A) no less than 3 years' experience operating equipment requiring a second-class hoisting engineer's license or shall otherwise be shown to be equivalently competent by examination;

(B) passed his 18th birthday; and

(C) passed a written test prescribed by the division.

(ii) An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) Applicants for a second-class hoisting engineer's license shall:

(A) have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or shall otherwise be shown to be equivalently competent by examination;

(B) successfully pass a written examination prescribed by the division; and

(C) have passed their 18th birthday.

(ii) An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) Applicants for a third-class hoisting engineer's license shall successfully pass a written test prescribed by the division and shall be at least 18 years old before receiving this license.

(3) The division shall reexamine each licensed engineer or operator every 5 years during the anniversary month of his license if the licensee has not worked at the trade for 5 years.

History: En. 69-1601.1 by Sec. 2, Ch. 456, L. 1975; amd. Sec. 1, Ch. 148, L. 1977; R.C.M. 1947, 69-1601.1.

50-76-104. Application and fee for license. Application for licenses shall be made to the division in the same manner and the same fee shall be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part).

50-76-105. Renewal and period of validity of license. The license is valid for 1 year from the date of issuance and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part).

50-76-106. Revocation of license. The division may revoke any license issued under this chapter for any of the reasons for which the division may revoke a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part).

50-76-107. Scope of license. A license granted under this chapter entitles the holder to operate any of the machinery named in 50-76-102 and 50-76-103, and the license shall specify that machinery, but no license issued shall authorize or qualify the person to whom issued to operate a boiler, steam engine, steam-driven machinery, or air compressor.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; R.C.M. 1947, 69-1603(1).

50-76-108. Renewal of application by rejected candidate. Any person who has applied for a license under this chapter and has been rejected may renew his application for a license within the time and in the manner prescribed in 50-74-312.

History: En. Sec. 6, Ch. 104, L. 1915; re-en. Sec. 2735, R.C.M. 1921; amd. Sec. 5, Ch. 456, L. 1975; R.C.M. 1947, 69-1606.

50-76-109. Violation of chapter a misdemeanor. Every person who operates any of the engines and machinery named in 50-76-102 or 50-76-103 for which a license is required without first obtaining a license as required by the sections referred to above and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate such engines or machinery or any person who violates any of the provisions of this chapter is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R.C.M. 1921; re-en. Sec. 2736, R.C.M. 1935; amd. Sec. 21, Ch. 225, L. 1971; amd. Sec. 7, Ch. 456, L. 1975; amd. Sec. 2, Ch. 148, L. 1977; R.C.M. 1947, 69-1607.

50-76-110. Crane inspector. The division shall employ at least one crane inspector. He shall hold a first-class hoisting engineer's license under this chapter for 1 year and have 3 years' experience operating cranes.

History: En. 69-1608 by Sec. 6, Ch. 456, L. 1975; R.C.M. 1947, 69-1608.

CHAPTER 77

CONSTRUCTION SITE HEALTH AND SAFETY

Part 1 — General Provisions

Section
50-77-101. Construction of scaffolds.
50-77-102. Temporary floors for protection of workmen.

50-77-103. Planking above scaffolds.
50-77-104. Guarding of stairways and other openings.
50-77-105. Temporary toilets.
50-77-106. Building inspector to enforce chapter.
50-77-107. Penalty for violation.

Part 1

General Provisions

50-77-101. Construction of scaffolds. All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, of sufficient width, and properly secured so as to ensure the safety of persons working on them or passing under them or by them and to prevent them from falling or to prevent any material that may be used, placed, or deposited on them from falling.

History: **En. Sec. 1, Ch. 107, L. 1909; re-en. Sec. 2672, R.C.M. 1921; re-en. Sec. 2672, R.C.M. 1935; amd. Sec. 8, Ch. 187, L. 1977; R.C.M. 1947, 69-1401.**

50-77-102. Temporary floors for protection of workmen. (1) It shall be the duty of every owner, person, or corporation who shall have the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of said floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters a plank floor, which shall be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below or on such temporary floor in such building.

(2) Where the permanent floor is in place on the floor herein required to be planked, a temporary protective floor shall not be required.

(3) If the floor or permanent floor of the second floor, any other floor above the second, or roof is being placed previous to the permanent floor immediately below the floor which is being arched or planked, a good substantial temporary floor shall be laid on the joists and girders of the next lower floor.

(4) For the purpose of this section, the lowest framed floor in the building shall be considered the first floor.

History: **En. Sec. 2, Ch. 107, L. 1909; re-en. Sec. 2673, R.C.M. 1921; R.C.M. 1947, 69-1402.**

50-77-103. Planking above scaffolds. In buildings more than three stories high where persons are working on a scaffold or scaffolds on the outside of such buildings, such persons shall be protected by well secured planking set over the heads of such persons for the full width of the scaffolding on which they are working if another story or stories are being raised above such persons during the time they are working on such outside scaffold or scaffolding.

History: **En. Sec. 3, Ch. 107, L. 1909; re-en. Sec. 2674, R.C.M. 1921; R.C.M. 1947, 69-1403.**

50-77-104. Guarding of stairways and other openings. It shall be the duty of all owners, contractors, builders, or persons having the direct and immediate control or supervision of any buildings in course of erection, which shall be more than 30 feet high, to see that all stairways, elevator openings, flues, and all other openings in the floors shall be covered or properly protected.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).

50-77-105. Temporary toilets. Wherever such building or buildings over three stories high, other than a residence, are being erected in any city or town, temporary toilets in or convenient to such building shall be maintained for the convenience of the employees.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).

50-77-106. Building inspector to enforce chapter. It is hereby made the duty of the building inspector, his deputy, or other authorities in any county, city, town, or village in the state, through the county attorney or any other attorney, in case of failure of such owner, person, or corporation to comply with this chapter promptly, to take the necessary steps to enforce the provisions of this chapter.

History: En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).

50-77-107. Penalty for violation. Any person violating any of the provisions of the foregoing sections shall be fined not less than $100 or more than $200 for each offense.

History: En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).

TITLES 51 AND 52

RESERVED

HAROLD H. HARRISON
ATTORNEY AT LAW

STATE LAW LIBRARY OF MONTANA
3 0000 00100 9301

DOES NOT
CIRCULATE